

# SOS

## SAVE OUR SHORELINE

**SOS August 2012 NEWSLETTER**

**[WWW.SAVEOURSHORELINE.ORG](http://WWW.SAVEOURSHORELINE.ORG)**

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### **Celebrating Another SOS Victory With PA 247**

As those members on our email list already know, on July 2, 2012, Governor Rick Snyder signed into law Public Act 247, which specifically exempts mowing and common beach-grooming activities from state regulation. Unlike the 2003 law, this new law has no expiration date. While the Corps of Engineers-Detroit District still regulates our beaches, this change in state law was a major step toward getting our beaches back from unreasonable regulations.

We have a long list of people to thank, but it starts with Senator Tom Casperson from Escanaba. He was responding to citizen complaints from his own district when he contacted SOS for support. Because of your support, we were able to provide legal help from SOS Attorney Dave Powers; government relations support from David Ladd; and letter writing, postcards, phone calls, and meeting attendance from our members.

Without SOS, this change in the law would not have happened. Our twelve years of experience and hard work, all working together, made the difference. Congratulations!

Unfortunately, this does not mean our work is done. The Corps of Engineers - Detroit District still regulates beaches, and it appears from recent reports they still want to exceed their regulatory jurisdiction. "Environmentalists" in the Traverse City area are threatening lawsuits. And we hear increasing reports of people who want to do much more than walk on your beach. SOS needs to stay strong to confront these challenges as they come.

But for now, let's celebrate!



*SOS Presentation in Manistique, Michigan*



Ernie Krygier  
President  
Save Our Shoreline

### **SOS CROSSES THE BRIDGE TO MICHIGAN'S UP**

At the invitation of Senator Tom Casperson, SOS Attorney Dave Powers gave a PowerPoint presentation entitled, "Great Lakes Beach Grooming Under 2012 PA 247" in the cities of Marquette, Manistique, and Escanaba, Michigan on Friday, July 20, 2012. The meetings were well attended, were covered on local television, and well received. A group from Wisconsin inquired about maintaining SOS presence in that state, and many people from the Upper Peninsula indicated they would be joining SOS. Dave learned that their problems in areas like Little Bay de Noc are the same problems we've dealt with in the Lower Peninsula. Welcome to our new SOS members from the UP!

## VICTORY FOR MICHIGAN BEACH FRONT OWNERS: GOVERNOR SIGNS SENATE BILL 1052 INTO LAW!

Governor Rick Snyder signed the Beach Grooming Bill, Senate Bill 1052 (which became Public Act 247 of 2012) into law effective July 2<sup>nd</sup>. This law amended the Natural Resources and Environmental Protection Act Parts 303 (Wetlands) and 325 (Great Lakes Submerged Lands) to eliminate the state requirement that beachfront owners obtain a permit for grooming or removal of vegetation between the ordinary high-water mark and the water's edge.



The SOS Board and our attorney and lobbyist worked diligently with Senator Tom Casperson, MDEQ officials, and key legislators to develop a bill that protects shoreline property rights but also accommodated concerns raised by environmental groups related to established wetlands. As a result, the law passed the legislature with significant bipartisan support thanks to the leadership of Senators Tom Casperson, Mike Green and all of the shoreline property advocates in Michigan such as SOS that committed political support for the bill.

This means that most Great Lakes shoreline property owners can maintain their beaches without seeking a permit from the Michigan Department of Environmental Quality (MDEQ). The new law prohibits the state from using laws or regulations governing wetlands or submerged lands to prohibit beach grooming. As a result, the following activities are no longer subject to state regulation:

- Leveling of sand, removal of vegetation, grooming of soil, or removal of debris in typical beach areas of sand, rock, or pebbles, located between the ordinary high-water mark and the water's edge
- Mowing of vegetation between the ordinary high-water mark and the water's edge

These changes—and especially the exception for mowing—should help shoreline owners remove the invasive, non-native plant *Phragmites* from their property. To protect established wetlands, the legislation excluded the St. Clair flats area from the new provisions and any area designated as an “environmental area” as defined in a separate state law.

SOS President Ernie Krygier noted that it had been twelve long years in the making to obtain this legislative victory. He expects the reduction of *Phragmites*, better beaches and more tourism into Michigan will have a positive economic effect in the entire state. Ernie gave special consideration to all of the SOS members that phoned, wrote, testified and tirelessly supported these changes.

As reported in our December newsletter in late 2011, the MDEQ had released the proposed new general permitting requirements for wetlands, inland lakes, streams, and the Great Lakes. These regulations would be the replacement for the existing general permitting regulations enacted in 2003 that included beach grooming. Unfortunately, the MDEQ excluded beach grooming activities entirely from the proposed new general permitting process, reversing much of the regulatory progress attained in the last nine years. In response, SOS decided to pursue a legislative solution to beachfront maintenance activities. This effort eventually led to the passage of the new Beach Grooming Law, Public Act 247 of 2012.

Despite this tremendous accomplishment, please note that the Army Corps of Engineers (ACOE) Detroit District still regulates all navigable waters of the United States, including beach front property. Public Act 247 removes the need for a permit from MDEQ state officials, but does not change the regulatory authority of the ACOE. Many beach front activities still require a permit from the ACOE to maintain compliance with the Clean Water Act. However, the one important exception is mowing of beaches, which the Detroit District does not regulate. As a result, most Great Lakes shoreline owners may mow immediately without seeking a federal or state permit.

More information about the impact of Public Act 247 may also be found at [www.saveourshoreline.org](http://www.saveourshoreline.org).

## GUIDANCE REGARDING NON-BEACH WALKING ACTIVITIES

In 2005, the Michigan Supreme Court held in *Glass v. Goeckel* that the public had a right of beach walking on private riparian land. Unfortunately, not all of Michigan's citizens understand or respect the laws related to accessing the waters of the Great Lakes. Some members of the public have misunderstood the court decision to mean that beachfront owners in Michigan have no property rights under the law. Sadly, this situation is further complicated by similar misrepresentation by state officials.

It is possible that your private beach may be used in a manner inconsistent with beach walking, such as persons camping or partying on your beach,

riding motorcycles or ATVs, or just hanging out in front of your home. This is technically trespassing, even on a beach. It would be reasonable to place "private property/beach walking only" notices on your beach and encourage visitors to respect this request. It is always important to use caution and reasonableness when requesting others to respect private property, however, if they do not respect your wishes, do not hesitate to contact local law enforcement or the DEQ for assistance. SOS is interested in monitoring conflicts along the shore, so please let us know if you are having problems with the public exceeding their beach walking rights on your beach.

## SUMMARY OF RIPARIAN BEACH GROOMING RIGHTS

The passage of the Beach Grooming legislation under Public Act 247 of 2012 clarifies that the MDEQ may no longer cite state laws under the Wetland Protection Act or the Great Lakes Submerged Lands Act to require shoreline owners to obtain a state permit for beach maintenance on a Great Lakes Beach. This reverses regulatory activity by the MDEQ that had occurred during the last 12 years that threatened riparian owners with public fines and enforcement action for simply cleaning their beaches in front of their homes. It was arbitrary interpretations of state laws by MDEQ officials that led to the initial formation of Save Our Shoreline.

The following is a summary of beach grooming rights for riparian owners under the new state law:

- For most beaches, the law will allow mowing of vegetation between the water's edge and the statutory "ordinary high water mark". Mowing is the simplest and fastest way to get relief from unwanted vegetation such as phragmites and is not regulated by the ACOE.
- Allows the leveling of sand, removal of vegetation, grooming of soil, or removal of debris, between the water's edge and the ordinary high water mark as long as the soil is made up of "unconsolidated material predominately composed of sand, rock or pebbles"

- The revised law does not apply to the St. Clair Flats in Northern Lake St. Clair or any area designated as an "environmental area" under state law. Most beaches designated as "environmental areas" are noted as such on the MDEQ website at [www.michigan.gov/deq](http://www.michigan.gov/deq)
- The law does not change any of the existing regulations enforced by the ACOE under federal statute. A federal permit may still be required for leveling of sand, removal of vegetation, grooming of soil or removal of debris involving the movement of sand by mechanical equipment. More information may be found by contacting the ACOE Detroit District Regulatory Office at (313) 226-2218 or visiting their website at [www.lre.usace.army.mil](http://www.lre.usace.army.mil)

The ACOE does not require a permit to remove vegetation by hand, hand shoveling or hand raking. As a result, the changes in state law mean that riparian owners may mow or use hand tools to remove vegetation between the water's edge and the ordinary high water mark without any permits from federal or state officials.

More information about riparian rights under Public Act 247 may also be found at [www.saveourshoreline.org](http://www.saveourshoreline.org).

## A HISTORICAL PERSPECTIVE By Bernie Uhlmann



I have often marveled at the ingenuity and genius of the founding fathers of the United States. John Adams, in particular, was keenly aware of the tendency of governments to usurp the rights of property owners. He had experienced this kind of behavior in England.

When it was time to write a constitution for the United States, he and the other writers of that

document included a system that gave citizen property owners the ability to stop needless encroachment on their right to manage their property as they deemed fit to do.

It amazes me that the system they devised worked for us more than 230 years later. I think the founding fathers would have been proud of SOS and citizens who supported the effort that resulted in the passage of Senate Bill 1052. We have used the legislative process passing Senate bill 1052. We used the judicial process with the Glass vs Goeckel case. At first it was viewed as an unfavorable ruling. The Glass vs Goeckel decision produced a new definition of the high water mark. In

the future, organizations driven by people with different agendas will try to move that ordinary high water mark to accomplish whatever it is they are trying to achieve. It will not be in the best interest of the property owners. Right now the Army Corps of Engineers has a different idea of where the ordinary high water mark is located. They are not a judicial or a legislative body. In the Kincaid case, the judge asked the Corps how they figured they had the right make such a determination. In the future their ability to make law regarding property rights will be an issue. You can bet that future litigation regarding ordinary high water mark issues will be determined by the definition the Michigan Supreme Court rendered in Glass vs. Goeckel. This definition is very favorable to property owners, particularly in times of low water levels. SOS invested time and resources to this case. It may prove to be one of our best efforts over time.

As recently as last year, we were told the State controlled the shoreline property from the seawalls to the location where the water met the land. This gives us some insight into what government agencies would like to do if they were not checked by property owners. Imagine trying to stop them on your own.

We have a government of the people. SOS is an organization of the people. The effort SOS put together proves that the system set up by the founding fathers still works.

## PRIVATE OWNERSHIP OF GREAT LAKES BEACHFRONT: TO THE WATER'S EDGE

The SOS board has been monitoring state regulatory activity in relation to beachfront ownership issues. Many of the beach maintenance, grooming, wind turbines and other developments of interest to shoreline owners stem from public policy decisions often made by state officials that seek to erode private property rights. In fact, the insidious expansion of government activities into private interests continues to be an ongoing debate at every state and federal level. As many SOS members will recall, our sister organization, the Ohio Lakefront Group, prevailed last year in their battle to stem the tide of administrative property takings by the State of Ohio. At issue was the State of Ohio determination that the public owned the private beaches along Lake Erie and that shoreline owners would need to sign a lease from the state for use of their private property!

The arguments used by Ohio state officials were not very different from those utilized by the MDEQ in Michigan. Both essentially hold that (contrary to established law),

the state owns portions of privately held beaches up to and in some cases beyond the ordinary high water mark. This argument means that the state can seize land titled to individual property owners without compensation. This precedent was at stake in the Ohio Lakefront case supported by an SOS amicus brief in 2010. Given the importance of this fundamental property issue, SOS was very pleased with the judicial outcome that unanimously supported the Ohio Lakefront group and protected shoreline property rights.

SOS has issued a position paper detailing the Michigan laws that support private ownership of Great Lakes beachfront property to the water's edge. This would be our basis for legal action if any shoreline owners in Michigan found themselves under assault by the MDEQ concerning beach ownership. A summary of our position in this matter prepared by David Powers on behalf of the SOS membership may be found on our website at [www.saveourshoreline.org](http://www.saveourshoreline.org).

## UPDATE ON OFFSHORE WIND TURBINES By George T. Wolff, PhD

The push to deploy off-shore wind turbines in the Great Lakes has been quiet in Michigan over the last year while opposition to them has generally increased throughout the Great Lakes region including in Canada. Plans for proposed offshore projects have stalled, and some local and Provincial governments have enacted temporary moratoriums for a variety of reasons. The reasons range from hazards to lake birds, unsustainable economics, fear of visual blight, loss of coastal property values, and engineering and safety concerns.

In other coastal areas in the U.S., the situation is similar as plans to erect wind farms off the coasts of Massachusetts, New Jersey, Delaware and North Carolina have been put on hold. Although some land-based wind farms continue to be built, many have been halted or terminated due to growing public opposition. In addition to the reasons cited above for the Great Lakes' projects, human health and noise complaints appear to be on the rise. Several spectacular failures (explosions and fires) on existing wind farms have contributed to the growing skepticism of the public.

The impetus to develop wind energy in Michigan is largely driven by Public Act 295, which was signed into law in 2008 by Governor Granholm. It requires that by 2015, 10% of the electricity generated in Michigan must be produced from renewable energy sources.

Environmental groups are trying to place a ballot initiative on the November ballot that would increase the renewable energy requirement to 25% by 2025 and make it part of the State Constitution.

This would automatically trigger more proposals for wind farms in Michigan. Since the recent public backlash has halted many projects elsewhere, and has resulted in many new ongoing studies on the negative effects of the turbines, it seems very premature to enact such a ballot proposal mandate at this time. Furthermore, enacting it as part of the Michigan State Constitution would be very inappropriate.

SOS will continue to monitor this issue in the State of Michigan and will alert our membership to legislative or executive initiatives that may arise.



## US ARMY CORPS OF ENGINEERS-DETROIT DISTRICT ISSUES REGIONAL PERMIT

The ACOE Detroit District reissued its regional permit for Michigan on May 25, 2012. This is a follow-up to the revised regulations concerning nationwide permits, general conditions and definitions released in February. These regulations are reissued approximately every five years and provide the context for the ACOE oversight responsibility for the waters of the United States as defined in the Clean Water Act.

The regional permit for Michigan addresses issues such as leveling of sand and beach grooming. The regulations are intended to ensure that actions by state and local governments, corporations and individuals have a minimal adverse effect and cause only minimal cumulative adverse effect on the aquatic environment. As noted above, the ACOE regional permitting process

remains in place through May 2017 despite the recent passage of the beach maintenance legislation in Michigan.

The new regional permit offers changes from the prior permit in 2007 that may be helpful to beach owners. For example, the permit previously was not available if vegetation existed. The 2012 changes extended the permit to leveling of sand in areas that have "very sparse" vegetation. Another change was removal of the 25 yard limit in the case of sand leveling. Application for a permit is still required.

More details regarding the regional permitting process and permits for shoreline work may be found at [www.lre.usace.army.mil](http://www.lre.usace.army.mil).

**Welcome  
New UP Members!**



## SOS LEGAL FUND UPDATE

By Joe McBride, Chairman of SOS Legal Committee



To all of you who answered our call to support the Legal Fund this spring, it is difficult to express our enormous gratitude because it enabled us to see the Beach Maintenance Bill become law (PA 247). Thousands of shoreline property owners will benefit from your generosity and from preventing the loss of shoreline property rights. To those of you who have not contributed to the legal fund either because you did not receive the notice or just forgot, it is not too late. Just put a check in the mail with a note that it is to be used for the legal fund and send it to us.

If you have been following the newspapers it appears that the Army Corps of Engineers Detroit District (Corps) still has their sights on our beaches. A few days after Governor Rick Snyder signed the Beach Maintenance Bill, the Chief of Compliance and Enforcement, Donald Reinke, said, according to the Detroit Free Press, "On Lakes Michigan and Huron, the federal high-water mark is about a foot higher than the mean high-water mark set by the state." We know that this elevation is not reasonable because a federal court in 2005 said that the administrative high-water mark was not reasonable. In 2007, the Corps issued a memo saying, "That we cannot solely use our administratively set OHWMs for jurisdiction determinations on the Great Lakes ...."

What is true is that there is a federal regulation, 33 CFR § 328.3(e), that states: "The term *ordinary high water mark* means that line on the shore established by the fluctuation of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriated means that consider the characteristics of the surrounding areas." I do not see the administrative high water mark mentioned in the Federal Regulations. It only exists in the minds of those who have an agenda to destroy your property rights.

You might ask, "Why is the Corps taking such an inappropriate stand?" Maybe it is because they think they will intimidate many of you into not grooming your beach or doing only what they say you can do. It is the same scare tactics they used in 2000 and it worked. What did it get them? Law suits. What did we get? *Phragmites*. Well, we do not want *Phragmites* so they can have them back! If it is law suits they want, we will be prepared with our Legal Fund.

The Corps is not our only threat to make the new law void, for there are at least two environmental groups in Traverse City: the Tip of the Mitt and Flow for Water Public Trust Policy Center who do not agree with the new law and will do anything including bringing a law suit to get it voided. Also the Michigan United Conservation

Clubs (MUCC) vigorously opposed the Bill as it went through the House and Senate so expect considerable pressure on our elected officials and bogus scientific studies to be rolled out.



One of the groups in their campaign article said, "Allow mowing live *Phragmites* all the way down to the water's edge without any state review whatsoever - the very thing that spreads this destructive invasive and would undo our 78% success rate of controlling it." I know what they said is both grammatically and factually incorrect, but that is what they said. What these folks want to do is dump tons of chemicals in the sand and water under the state's guidance. Well, under the state and the group's guidance we now have *Phragmites*. They said to let the green grow, and it did grow, and the storms washed it to many shores and *Phragmites* flourished. Also, for those of us who do not want to see chemicals on our beach or in our water, that is not going to work. We know this because we had to deal with *Phragmites*. We know that you can either pull them or continuously cut them and remove the cuttings and after a couple of years they are gone.

Another group wants the Legislature to fix the law, and if they do not, then they have indicated that they are willing to bring a law suit to declare the new law void as disregard of the public trust. I think they should be careful of what they ask for, because it is very possible that the courts may find that exclusive control all the way to the water's edge is in the hands of the shoreline property owner as articulated so clearly in Hill v Weber.



So my friends, we have more work to do to get the Corps to follow the law and be reasonable, and we have environmental groups that want to continue to take our property for their own experiments. All these threats will continue despite the new law, and this is why we will need your funding support, especially from those in our membership who did not contribute this spring to the Legal Fund. Now is your time to act to protect your property interest. I have recommended to the Board of Directors that we squarely face these challenges and vigorously defend our property rights, but without your help we will not prevail. So, I implore you to consider your property rights; if they have no value, then do not contribute. But if they do, then please help us.

As a reminder, all funds that we raise for the Legal Fund go directly to pay our legal expenses, and none goes to me or any board member. Our time and labor is our contribution to protect our property rights.

### MESSAGE FROM SOS TREASURER By Chuck Groya

Your SOS board can't thank everyone enough for their support to our legal fund to insure SB 1052, the beach maintenance bill (now called PA 247) passed. This is what we have been working on for several years and our member support made it happen.

As you may recall we start our new fiscal year on August 1, 2012. Our work and need for your support will continue. We will still need our lobbyist in Lansing to make sure your rights are looked out for. We still need to do legal work on the State and Federal level to protect our rights and keep our beaches safe and clean.

We will be sending out the dues letter asking for your support for 2012/2013. I feel our Political Action Committee funds are in good shape and no need to ask for more. As usual we will be asking

for \$25 dues for our general fund and additional support to our legal fund. Any amount you can afford will be greatly appreciated and needed.

On a personal note, I will be stepping down from the board in October when my term expires. It has been a great experience working for our members and with your talented SOS board. Our support people, Dave Powers our attorney, Dave Ladd our lobbyist, and Joe McBride our legal chair have been excellent. I don't see how we could do better. If you or anyone you know is interested in helping your friends and neighbors by joining the board and taking over the treasurer's job please give Ernie a call.

Thank you again for support to our Mission to promote clean safe beaches.

### UPPER GREAT LAKES STUDY UPDATE: LAKE HURON LEVELS ARTIFICIALLY LOW

As mentioned in previous newsletters, SOS has been monitoring the International Upper Great Lakes Study. This is a bi-national study being conducted by a group of experts appointed by the International Joint Commission (IJC) to investigate the causes and impacts of fluctuating water levels on the Great Lakes. The study also examines regulatory and adaptive options that potentially could provide additional benefits to interests throughout the system.

Phase 1 of the Study examined whether changes in the St. Clair River were affecting water levels in the upper Great Lakes. The "St. Clair River Report" was released in December 2009 and can be viewed on the Study website, [www.iugls.org](http://www.iugls.org).

Phase 2 considered whether we can improve conditions for all interests--and also adapt to a changing climate--by better regulating the flow of water out of Lake Superior and into Lakes Michigan and Huron. This part of the study also reviewed the possibility of "restoring" water levels in Lakes Michigan and Huron to levels before the dredging projects of prior decades.

A final report was drafted, peer-reviewed, and submitted to the IJC earlier this year. It is currently released for public comment. The end result of both reports is the conclusion that although dredging at the outlet of Lake Huron in the St. Clair River has contributed to the artificial lowering of water levels in Lake Huron, the IJC recommends that no action be taken to remedy the lower waters in the Lake Huron-Lake Michigan basin.

SOS members are strongly encouraged to review the final Upper Great Lakes Study report and submit public comments to the IJC concerning the decision to take no action to remedy the lower water levels in Lake Huron.

More information on the Study and the contact information for submitting comments may be found at [www.iugls.org](http://www.iugls.org). In addition, the SOS board will be communicating further updates and recommendations to the membership regarding this issue as events develop.



**SAVE OUR SHORELINE**

a Michigan nonprofit corporation  
P.O. Box 2307  
Bay City, Michigan 48707-2307  
Telephone: (989) 667-2910

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**SOS OFFICERS AND DIRECTORS:**

Ernie Krygier	President	785 Bay Rd.	Bay City	(989) 684-2830
Sue Adams	Vice President	705 Bay Rd.	Bay City	(989) 414-3196
Frank Whalen	Secretary	293 Donahue Beach	Bay City	(989) 686-2176
Chuck Groya	Treasurer	745 Bay Rd.	Bay City	(989) 667-1884
Betty Pattullo	Director	2777 Tomlinson Rd.	Caro	(989) 672-2626
Bernie Uhlmann	Director	251 Donahue Beach	Bay City	(989) 684-7145
David Almeter	Director	3804 Lee Point Rd.	Suttons Bay	(231) 271-6554
Ron Graham	Director	789 Bay Rd.	Bay City	(989) 414-6426
Christopher Pinter	Director	1017 Brissette Beach Rd.	Kawkawlin	(989) 684-9542
Robert W. Foster	Director	3685 So Bay Ridge Ln.	Suttons Bay	(231) 271-6257
Al Weaverstad	Director		Suttons Bay	(248) 625-4335

***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.”