

## NARRATIVE SUMMARY OF SOS ACTIVITIES THROUGH JULY 2007

Save Our Shoreline was formed in August of 2001, with the adoption of our [Articles of Incorporation](#) and [Bylaws](#). The Board subsequently adopted a [Mission Statement](#) and a [Statement of Operational Strategy](#). We developed [organizational materials](#) and began a membership drive that has taken us to over 3,200 member households. We were responding to letters from [state](#) and [federal](#) authorities stating that we could no longer maintain our beaches. The state asserted that the vegetation appearing on those beaches was normal and that the state owned all shoreland below the elevation of 580.5 feet above sea level. The federal letters asserted that the Corps of Engineers had jurisdiction of all shoreland below 581.5 feet above sea level. As you will see below, these assertions proved untrue.

Three months after our formation, hundreds of us came out in force at a meeting of the [Great Lakes Task Force](#) of the Michigan Senate, whose report noted our presence and the need to address our concerns in several places. We then organized a [legal fund](#) and promptly raised over \$200,000 so that we could respond, as a community, to [claims of state ownership](#) of the beaches, to the assertion of federal jurisdiction over our beaches, and to [suits filed](#) against three beachowners for beach grooming, among other things.

In Summer 2002, three board members gave a **congressional briefing** in Washington, D.C., and the House Transportation Committee subsequently issued a **committee report** questioning the Corps' actions, and directing the Corps to work with shoreline owners. Later that summer, we filed an **amicus brief** with the U.S. Supreme Court in *U.S. v Borden Ranch Partnership*, and our concerns about the government's expansive use of the Clean Water Act to curtail beach maintenance were specifically taken up by the court at **oral argument**. The issues, however, were left unresolved due to a **4-4 decision**.

The **letters** from the state asserted that the state owned our beaches to a so-called "Ordinary High Water Mark"; that vegetation was "regrowing"; and that beach grooming violated laws governing wetlands and submerged lands. Though we doubted the accuracy of these assertions, we decided to pursue changes in the law to clarify our rights. After a comprehensive **presentation** and legislative campaign, we obtained passage of **2003 P.A. 14** on June 5, 2003. Among other things, the Act allowed removal of vegetation under certain conditions, and the MDEQ developed a **new permit form**. At the same time, the Michigan legislature passed a **concurrent resolution** requesting that the President and the Corps defer to Michigan law. At about that time, SOS received a **special tribute** from the Michigan legislature.

To rebut the MDEQ's assertion of ownership, we filed an [amicus brief](#) with the Michigan Court of Appeals in a case involving a shoreline owner's exclusive-use rights to his beach, and as a result, that [court ruled](#) in favor of the shoreline owner. That case was [appealed](#) to the Michigan Supreme Court, and we filed an [amicus brief](#) in response, explaining that shoreline owners own to the water's edge. Several other organizations filed [supporting briefs](#). The [court refused](#) to adopt the state's position (as set forth in its letters) that it owned the beaches below the elevation of 580.5 feet above sea level, but did change Michigan law by imposing a "public trust" upon private shoreland, which included a "right" for the public to walk the shores. We helped an [Appeal to the United States Supreme Court](#), but that request for appeal was [denied](#). The SOS Board continues to evaluate its response to this decision, which it deems an unconstitutional taking, and inconsistent with prior Michigan law.

We learned that much of the vegetation was not "regrowing," as the state asserted in its letters. Instead, we found that the vegetation growing on most of our beaches was [phragmites](#), an invasive, non-native species that has virtually no habitat value, crowds out and eliminates native vegetation, and grows twice the height of native vegetation (in many cases 10-15 feet high). It is an opportunistic plant that overtook the nutrient-

enriched shores exposed by low water. Indeed, **photos** show that this was the vegetation presenting itself on the beach of the Kincaids, who were sued by the federal government when they fought against the plant. Save Our Shoreline has raised awareness of the phragmites problem with state and federal regulators, the environmental community, and the public, and has successfully led the effort to **legally ban** the proliferation of phragmites in Michigan.

Our federal efforts have also achieved results. Though two shoreline owners promptly settled for nominal damages, the Kincaids of Caseville chose to fight for their rights, and SOS helped, leading the Corps of Engineers to seek and obtain a **settlement dismissing** its **complaint**. Although the Kincaids' **request** for attorney fees was **denied**, the Federal District Judge rejected the Corps' assertion that it had jurisdiction below its administratively set OHWM of 581.5 feet above sea level. Further, though originally **opposed** by our organization as too insubstantial, the Corps issued regional permits authorizing limited beach maintenance activities for both **residential** and **commercial properties**, and it reduced a 40-page application form to **one page**. It reissued and expanded a **regional permit** in 2007.

Early on, the Corps organized a "Shoreline Task Force" in which it reluctantly asked SOS to participate, but its **Final**

**Report** accomplished little due to its **lopsided participant composition** in favor of environmental organizations. The Corps has lost sight of regulations requiring **prompt, unbiased** permit decisions, consideration of **many factors** in permit decisions, and **deference to state law** in permitting decisions. A **bill** to address the Corps' activities introduced in Congress by Rep. Bart Stupak did not get out of committee.

Our organization reports to its members by way of **newsletters** and postcards, and reports to the public by issuing **press releases**. We invite you to **join**.