

# S.O.S.-MAINE SHORELINES FALL 2011



## "SHORELINES"

is the official publication of  
**SAVE OUR  
SHORES-MAINE**  
P.O. Box 1785  
Wells, ME 04090

### MISSION:

*S.O.S.-Maine's mission is to educate the coastal community about issues that impact Maine's coastal heritage.*

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*Bob Foley      Barbara Johnson*  
*Katy Kelly      Ken Lafayette*  
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## Greetings from the President:

As I put together this message over the Columbus Day weekend, I marvel at what wonderful weather we're continuing to have. There's still time to get out to enjoy this healthy Maine coastal environment where we all have worked so hard to be. There's still time to appreciate brilliant colorful fall foliage and flowers, to mess about in boats, to take leisurely reflective walks along winding shorelands and wooded pathways, and to share time with fun family and neighborhood gatherings.

While we concentrate on our family, work, homes and hobbies, others are working on a self-centered mission which is totally alien to our way of living and thinking. They continue trying to destroy private property rights by using other people's organizations and money for their personal recreational gain. As an example, reports are that because of a few individuals' demands, one local municipality has spent three quarters of a million dollars attacking coastal private property rights so these few individuals can recreate there.

What can S.O.S.-Maine do for those of us living, working and owning property here on the shorelands of Maine? The I.R.S. Rules for a not-for-profit organization are very specific that "we may not intervene in political campaigns or conduct substantial lobbying activities" to include "limit its purposes to one or more of the exempt purposes listed in the Code Section"; we "must avoid all activities that will benefit substantially the private interest of any individual or organization. Instead, the 501(c)(3)'s activities must serve a public interest."; "this does not mean that a 501(c)(3) can not .... Provide services to its constituents."; and the issue SOS Maine must be most sensitive to is the I.R.S.'s ruling on lobbying which they define as "activity designed to influence legislation .... If it contacts, or urges the public to contact, a member or employee of a legislative body to propose, support, or oppose legislation..."

I feel that S.O.S.-Maine's primary function and service to its members has consistently been to provide accurate facts on issues affecting private property. We have accomplished this by collecting and receiving information from news media and our membership. We have analyzed this information for its source, validity and impact. Generally, it takes very little time to turn-around a received "rumor" or written article and get back to the member that alerted us and to our organization whether this "new" information is fact, fiction or a provocation.

This process is another great benefit of having a very experienced and capable S.O.S.-Maine Board. This also points out why S.O.S.-Maine needs to broaden our membership from Kittery to Cape Elizabeth. We need more members that are alert and willing to keep S.O.S.-Maine informed as to what others are successfully doing to maintain their shoreland homes and property, who understand pending local, county, and state laws, rules and ordinances and can identify sources of anti-private property rights.

Your dues will help us to keep you informed and to establish and maintain mechanisms to publish well-researched facts. These SOS Maine methods include our improved website, the fact-filled "Shorelines", specific issue pamphlets, conferences, speakers at our Annual Meeting, and informational booths at area events. Please help your organization be more effective with these objectives by encouraging others from Kittery to Cape Elizabeth to join S.O.S.-Maine.

Sincerely,

*Mike Severance*

President, S.O.S.-Maine

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**S.O.S.-MAINE P.O. BOX 1785 WELLS, ME 04090**  
[www.sosmaine.org](http://www.sosmaine.org)

Many thanks to

*Jef Bucknam*

for her 16 years of service to S.O.S.-Maine  
Our organization is grateful for having  
Jef serve for 15 years as Secretary, and  
donating many, MANY hours  
representing SOS-Maine on local boards,  
state conference panels and legislative  
committees.

## **S.O.S.-MAINE BOOTH AT WELLS HARBOR COMMUNITY PARK**

by Barbara Johnson

On July 30, 2011 S.O.S.-Maine manned a booth during the Wells Rotary BBQ at the Harbor Community Park in Wells, ME. The booth featured historical pictures of local beaches along with same site pictures taken this year, and a free raffle.

Volunteer board members talked to people attending the BBQ throughout the afternoon. Information about SOS and MCC was dispersed with copies of the most recent newsletter and we answered numerous questions. Almost everyone expressed appreciation that there is an effort underway to protect the Maine coastline and beaches and we acquired five new members.

The day ended with a raffle. The winners were:

**Sue Richardson** of Kennebunk, ME - \$50.00 Forbes Gift Certificate

**Megan & Mike Edmonds** of Sanford, ME - \$50.00 Scoop Deck Gift Certificate

**Kathy Antonellis** of Natick, MA - \$50.00 Congdon's Gift Certificate  
**Louis Iadisernia**, Wells, ME ; **Leroy Cheney**, Wells, ME; **David Coulson**,  
Hubbardston, MA – SOS Logo Baseball Hat

**Cheryl Kimball**, Bristol, NH; **Sandra Mollhe**, Sanford, ME;  
**Jane O'Brien**, Wells, ME - SOS Logo Visors

Congratulations Raffle Winners!

SOS has an interest in the entire coastline of Maine. Please encourage your friends and neighbors who love and use any part of Coastal Maine to become SOS members to help maintain and protect these resources.



## **SCOOP DECK**

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Congratulations to **Bob Foley** of Wells for his appointment to the Maine Board of Environmental Protection in October. Bob is a former president of the SOS-Maine Board of Directors. Governor Paul LePage nominated Bob for a 4 year term on the State Board and he received unanimous confirmation. He will attend meetings in Augusta and around the state of Maine to make "informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions." [38 M.R.S.A. section 341-B].



## **WEBSITE**

SOS-Maine's website

[www.sosmaine.org](http://www.sosmaine.org)

is your source

for information and

feedback on SOS activities.

You will find information on  
membership, legislative  
updates, copies of our newsletters,  
articles of interest about our coast,  
etc.

We hope that you will find  
this site useful and easy to  
navigate.



# Recent Developments on Beach Rights Litigation

The Maine Supreme Court in *McGarvey v. Whittredge* (2011 ME 97) has recently reconfirmed that the landmark *Moody Beach* decision in *Bell v. Town of Wells* is still the law of the land. This is a significant ruling for the pending *Goose Rocks Beach* case because it asserts very clearly that there are no public recreational rights in the intertidal zone beyond fishing, fowling, and navigation.

Although the Court struggled on the question of whether scuba

diving is a form of navigation, it reaffirmed that the beachfront owners whose deeds so provide continue to own the intertidal zone to the sea subject only to fishing, fowling, and navigation( and whatever walking is necessary to conduct those activities).

The Court decided that ‘scuba diving’ should be allowed as an activity in the intertidal zone as either 1.) a form of navigation under the Court’s *stipulative* definition to the effect that “navigation” means “*passing through the water without using the land under the water to do so ( as three of the judges held)....*” or 2.) because the colonial ordinance which governs these rights can be expanded to cover activities similar to fishing, fowling and navigation which scuba diving was (as the other three judges held). The Court made it clear that the ruling only allows *walking* over the intertidal zone for the purpose of scuba diving.

The Court reconfirmed that public recreational rights do not exist in the intertidal zone when it said that “accepting *Bell II*’s description of the public right in the intertidal zone as excluding a “general recreational easement...”

It is difficult to know how this case will shape future cases like the one at *Goose Rocks* since there was no clear majority on the reasons why scuba diving was permitted. On the one hand, the Court did not overturn *Bell II* as the State and the

Town had hoped, but on the other hand the definition of ‘navigation’ by three members of the Court and the other three justices’ willingness to expand the concepts of the colonial ordinances could lead to the possibility of allowing other shoreline activities that usually come under the category of general recreation (surfing or recreational swimming). We will need to see whether the Court will refine the definition of ‘navigation’ in the future to exclude activities such as recreational swimming.

In the *Goose Rocks* beach case now before the Superior Court in Alfred, we are awaiting a ruling from Judge Brennan on several motions for summary dismissal. The Town of Kennebunkport, for example, claims to own the whole of *Goose Rocks Beach* and so has moved for the dismissal of the plaintiffs’ complaint. That complaint sought a declaratory judgment on whether the public has acquired any recreational rights on the beach as a result of customary and unopposed usage over time. The plaintiffs responded to the Town’ claim by asserting that all the beachfront owners have deeds giving them title to the beach property to the sea which means to the low tide. That is the central issue before the Court now.

On November 18, 2011, Judge Brennan will hold a hearing in the York County Superior Court on the various motions for dismissal before the court. After the hearing, the judge will decide whether Kennebunkport or the beachfront owners own the beach to the sea.

The Board of Directors

Save Our Shores-Maine



## Wells Harbor Dredge Update

After four and a half years and nearly \$190,000 spent in legal fees and engineering costs, the Town of Wells is just days away from receiving its permit from the Maine Department of Environmental Protection. Now the fight goes on to the U.S. Congress to find the funds, \$3.5 million, necessary for the Army Corp of Engineers to undertake the dredge project and deposit the 160,000 cubic yards of sand onto both the northern end of Drakes Island Beach and Wells Beach at Casino Square. Both areas have been identified as the key areas to deposit the sand and allow the natural currents to redistribute it along both beaches.

This project is almost identical to the one performed in 2000. It seems that permitting these projects, to provide safe navigable access to the ocean and valuable nourishment for the area beaches should be easier and less expensive than what the Town of Wells has experienced. A discussion with the new head of DEP, Pattie Aho, and the current administration seems in order to improve a process that is too entrenched in the bureaucracy. A more practical, commonsense approach is needed.



**S.O.S.-Maine is now  
on Facebook!**



Join our Group SOS-Maine and keep updated on S.O.S.- Maine activities and events.



## ANNUAL MEETING

At the Annual Meeting held in July at the Coastal House in Wells, Ms. Pattie Aho, Acting Maine DEP Commissioner, addressed the membership of SOS-Maine and updated all on the current activities of the Maine DEP. She focused on the philosophy of the current administration, which is attempting to streamline the permitting process and identify legislation that needs to be revisited to make Maine better at balancing the need for protecting the environment and stimulating the economy. Ms. Aho answered questions from the audience and Boardmembers.

Ms. Aho has since been nominated and

confirmed as Commissioner of the Maine Department of Environmental Protection. S.O.S. Maine wishes her all the best in her new position.



## HELP WANTED

Two new Boardmembers are needed to fill vacancies on the S.O.S.- Maine Board of Directors.

No experience necessary!

Apply by emailing:

[info@sosmaine.org](mailto:info@sosmaine.org)

Other positions available:

Secretary ~S.O.S.-Maine

Technology Coordinator

## HATS AND VISORS

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**S.O.S.-Maine has  
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# E-LETS

Members of S.O.S.-Maine who submit their e-mail addresses with their membership dues will be included in an internal distribution list. This list will be used exclusively to send important and timely information to members in the form of an e-mail alert.

Please let us know if your e-mail address has changed so that we can update our database. The information can be sent to:

**info@sosmaine.org**



## S.O.S.-Maine & Maine Coastal Coalition Membership

The membership of S.O.S.-Maine continues to grow, with over 300 dues-paying members, and others on our mailing list who are receiving this newsletter. We will not be able to continue to mail the newsletter to these individuals in the future due to the cost of distribution, and ask that if you are interested in receiving the newsletter in the future, please become a member of S.O.S.-Maine. There is a membership form below, or you may visit the web-site [www.sosmaine.org](http://www.sosmaine.org) and print a form for yourself or your neighbor!

The Maine Coastal Coalition is the subsidiary of S.O.S. Maine, which is able to use donated funds to lobby for the interests of coastal property owners.

S.O.S.-Maine's fiscal year runs from July 1st to June 30th, and membership renewals are sent in July.



**S.O.S.-Maine  
P.O. Box 1785  
Wells, ME 04090**



Yes, we want to be on the S.O.S.-Maine team. Here's our membership:  
\_\_\_ \$25 Individual    \_\_\_ \$50 Family    \_\_\_ \$75 Business    \_\_\_ Other \$ \_\_\_\_\_

Yes, we want to be a part of the Maine Coastal Coalition. Enclosed is a separate  
donation to establish my membership. Our taxable donation is: \$ \_\_\_\_\_

Total Amount Enclosed \$ \_\_\_\_\_

Renewal     New member

NAME: \_\_\_\_\_

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Summer Mailing Address: \_\_\_\_\_

Phone: (summer) \_\_\_\_\_ (winter) \_\_\_\_\_

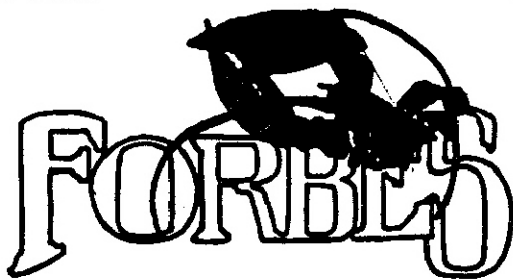
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