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Supreme Court, U. S.
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**In the
Supreme Court of the United States**

OCTOBER TERM, 1972

No. __, Original

STATE OF NEW HAMPSHIRE, *Plaintiff*

v.

STATE OF MAINE, *Defendant*

**MOTION FOR LEAVE TO FILE COMPLAINT AND
COMPLAINT**

WARREN B. RUDMAN
Attorney General

DAVID H. SOUTER
*Deputy Attorney General
Office of the Attorney General
State House Annex
Concord, New Hampshire*

ATTORNEYS FOR PLAINTIFF
State of New Hampshire

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**In the
Supreme Court of the United States**

October Term, 1972

No. —, Original

The State of New Hampshire, *Plaintiff*

v.

The State of Maine, *Defendant*

MOTION FOR LEAVE TO FILE COMPLAINT

The State of New Hampshire, by its Attorney General, asks leave of the Court to file its Complaint against the State of Maine submitted herewith.

WARREN B. RUDMAN
Attorney General

DAVID H. SOUTER
Deputy Attorney General

June 6, 1973

**In the
Supreme Court of the United States**

October Term, 1972

No. __, Original

The State of New Hampshire, *Plaintiff*

v

The State of Maine, *Defendant*

COMPLAINT

The State of New Hampshire, one of the states of the United States of America, by its Attorney General brings this suit against Defendant, the State of Maine, also one of the states of the United States of America, and for its cause of action states:

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2 of the Constitution of the United States, and Title 28, United States Code, Section 1251 (a) (1), since by this Complaint the State of New Hampshire seeks to initiate proceedings for an order describing a segment of the lateral marine boundary between the two states.

II

The description of the common boundary separating what are now the States of New Hampshire and Maine is contained in an Order in Council with respect to the Provinces of New Hampshire and Massachusetts Bay dated April 9, 1740, which provides, so far

as is pertinent here, "[t]hat the Dividing Line shall pass up thro' the Mouth of Piscataqua Harbour and up the Middle of the River . . . And that the Dividing Line shall part the Isles of Shoals and run thro' the Middle of the Harbour between the Islands to the Sea on the Southerly Side." *Laws of New Hampshire*, Vol. 2, p. 790, 793, A. S. Batchellor, Ed., Concord, New Hampshire 1913.

III

So far as is pertinent to this Complaint, the territory of the State of New Hampshire is identical with that of the former Province of New Hampshire, (Constitution of New Hampshire, Part Second, Article 1st) and the territory of the State of Maine is identical with that of the former Province of Massachusetts Bay, (Constitution of Maine, Preamble).

IV

The lateral marine boundary separating the two states is therefore a line

- (a) passing through the midpoint of the mouth of the Piscataqua River, also known as Portsmouth Harbor in the vicinity of the mouth of the River,
- (b) passing through the midpoint of the mouth of Gosport Harbor, in the Isles of Shoals, lying approximately six geographical miles seaward in the Atlantic Ocean from the mouth of the Piscataqua River, and separating Star Island, a part of the State of New Hampshire, from Cedar and Smuttynose Islands, parts of the State of Maine, and
- (c) a straight line passing through the Atlantic Ocean and connecting the midpoints of the mouths of the River and Harbor described above. This straight line is labeled "Portsmouth Harbor-Gosport Harbor" on the map reproduced as the Appendix, and made a part hereof by reference.

V

At all times material to this Complaint, the State of New Hampshire has been and is now entitled, to the exclusion of the State of Maine, to exercise sovereign rights of a state in and to the area southerly and westerly of said lateral marine boundary, such rights including but not limited to the right to enforce applicable laws of the State of New Hampshire such as those laws providing for the licensing of fishermen to take lobsters from the seabed and exclusion of those not lawfully licensed, and the rights to explore and exploit the natural resources in, on and about the seabed and subsoil underlying the Atlantic Ocean.

VI

For over one hundred years New Hampshire has permitted its residents to fish in the area southerly and westerly of said lateral marine boundary, and its residents have done so understanding the area to be within the State of New Hampshire, and in more recent times New Hampshire has issued licenses to permit such fishing; in particular, during that time those residents have been accustomed to determine the approximate location of said lateral marine boundary by making reference to the lights-in-range line, so-called, (labeled "Lights in Range" on the map reproduced as the Appendix) being the extension to the mouth of Gosport Harbor of a line connecting Fort Point Light (labeled as "A" on the map) and Whaleback Light (labeled as "B" on the map).

VII

The State of Maine claims some sovereign rights southerly and westerly of said lateral marine boundary, and in particular claims that the lateral marine boundary line connecting baselines crossing the mouths of the River and Harbor, described in Paragraph IV, is not a straight line, but a crooked line proceeding from a point on the baseline crossing the mouth of the Piscataqua River approximately one hundred fifty-six degrees East (true) for approximately three and twenty-six hundredths geographical miles; thence approxi-

mately one hundred thirty-two degrees East (true) for approximately one and seventy-one hundredths geographical miles; thence approximately one hundred twenty-three degrees East (true) for approximately one and twenty-nine hundredths geographical miles to a point on the baseline crossing the mouth of Gosport Harbor. This crooked line is labeled "Maine New Hampshire Boundary Line" on the map reproduced as the Appendix.

VIII

The straight line claimed by the State of New Hampshire as the lateral marine boundary between the two states, and the crooked line claimed by the State of Maine, thus form a disputed area of approximately two thousand four hundred acres.

IX

The crooked line is labeled as the Maine-New Hampshire boundary on the United States Geological Survey Map of the area in question, entitled "Maine-New Hampshire/York Quadrangle," Edition of 1920, but no legal basis exists to justify the description of the lateral marine boundary between the two states as that crooked line, and officials of the Geological Survey do not know why the line was so described. A portion of that map is reproduced as the Appendix to this Complaint.

X

No area relevant to this complaint is more than three geographical miles seaward from the ordinary low water mark of territory of one or the other of the two states or from the outer limits of inland waters of one or the other of the two states.

XI

In the assertion of claimed sovereign rights southerly and westerly

of the straight lateral marine boundary and within the disputed area, the State of Maine has, among other acts, purported to license its residents to take lobsters from the seabed southerly and westerly of that boundary and has sought by the purported enforcement of its lobster licensing laws to exclude New Hampshire residents from the area southerly and westerly of that boundary.

XII

On May 23, 1973, officers of the State of Maine operating in waters southerly and westerly of the straight lateral marine boundary arrested a New Hampshire resident duly licensed by New Hampshire to take lobsters there, and charged him with taking lobsters without being duly licensed to do so by the State of Maine, which charge is now pending.

XIII

Officials of the State of Maine have stated to officials of the State of New Hampshire that they will arrest and prosecute other New Hampshire residents, duly licensed by New Hampshire, who attempt to take lobsters southerly and westerly of the straight lateral marine boundary, and in so doing will continue to derogate from the sovereignty of the State of New Hampshire over the disputed area.

XIV

There is thus a controversy between the two states about the location of a significant segment of their lateral marine boundary.

XV

Although commissioners from each state authorized to propose a compact for the resolution of this boundary dispute have met together in an effort to resolve the dispute, no agreement has been reached, and it does not appear likely that any agreement can be reached.

WHEREFORE, the State of New Hampshire prays that the State of Maine be required to answer this complaint; that a preliminary order be issued restraining the State of Maine from interfering with fishermen duly licensed by the State of New Hampshire and fishing southerly and westerly of the straight line described in paragraph IV (c), above; that a special master be appointed to consider and report upon the historical claims and other factual evidence of the parties; that a decree be entered declaring the lateral marine boundary between the two states to be the straight line described in paragraph IV (c), above; and for such other and further relief as may be proper.

THE STATE OF NEW HAMPSHIRE

By

WARREN B. RUDMAN
Attorney General

DAVID H. SOUTER
Deputy Attorney General

Counsel for Plaintiff

June 6, 1973

CERTIFICATE OF SERVICE

I, David H. Souter, Counsel for Plaintiff, do hereby certify that in accordance with Rule 9(3), all parties required to be served thereunder have been served by mailing three copies each of the foregoing Motion and Complaint to The Honorable Kenneth M. Curtis, Governor of the State of Maine and The Honorable Jon A. Lund, Attorney General of the State of Maine addressed to their respective offices at the State House, Augusta, Maine, by first class mail, postage prepaid, each address being within 500 miles of the point of mailing.

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DAVID H. SOUTER

Concord, New Hampshire
June 6, 1973

APPENDIX

Portion of United States Department of the Interior Geological Survey map, Maine-New Hampshire/York Quadrangle, Edition of 1920, No. N4300-W7030/15, with markings to which references are made in the preceding Complaint.



