

In the  
Supreme Court of the United States

OCTOBER TERM, 1973

No. 64, Original

THE STATE OF NEW HAMPSHIRE, *Plaintiff*

v.

THE STATE OF MAINE, *Defendant*

MOTION FOR ENTRY OF JUDGMENT  
BY CONSENT OF PLAINTIFF AND DEFENDANT

Warren B. Rudinan  
*Attorney General*

David H. Souter  
*Deputy Attorney General*  
*Office of the Attorney General*  
*State House Annex*  
*Concord, New Hampshire 03301*

Richard F. Upton  
*Special Counsel*  
*10 Centre Street*  
*Concord, New Hampshire 03301*

Counsel for Plaintiff  
*The State of New Hampshire*

Jon A. Lund  
*Attorney General*

Charles R. Larouche  
*Assistant Attorney General*  
*State House*  
*Augusta, Maine 04330*

Counsel for Defendant  
*The State of Maine*



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Come now the State of New Hampshire and the State of Maine by and through their respective counsel and move the Court to enter judgment in this action by consent of the Plaintiff and Defendant as specified hereunder.

Counsel for Plaintiff, namely, the Attorney General of New Hampshire, Warren B. Rudman, the Deputy Attorney General of New Hampshire, David H. Souter, and Special Counsel for New Hampshire, Richard E. Upton, and Counsel for Defendant, the Attorney General of Maine, Jon A. Lund, and Assistant Attorney General Charles R. Larouche, represent to the Court that after long and careful study, they have come to agreement as to the pertinent facts and the applicable legal principles determinative of this action. The aforementioned Counsel have concluded that it is in the best interest of each State and of the Court to dispose of this action by a judgment as specified hereunder.

The aforementioned Counsel assure the Court that the requested disposition of this action has been fully explained to the Governor and Executive Council of each State by its



Counsel and that the Governor and Executive Council of each State approve the requested disposition of this action.

WHEREFORE, the Plaintiff and Defendant, by and through their respective Counsel, move the Court to enter the following judgment, each party hereby consenting thereto:

(1) This judgment determines the lateral marine boundary line between New Hampshire and Maine from the inner Portsmouth Harbor to the breakwater at the end of the inner Gosport Harbor, upon the Complaint, Answer Pretrial Memoranda and agreement of Counsel for New Hampshire and for Maine.

(2) The source of the lateral marine boundary line between New Hampshire and Maine lies in the Order of the King in Council of April 9, 1740, which Order provided:

"And as to the Northern Boundary between the said Provinces, the Court Resolve and Determine, That the Dividing Line shall pass up thro' the Mouth of Piscataqua Harbour and up the Middle of the River into the River of Newichwannock (part of which is now called Salmon Falls) and thro' the Middle of the same to the furthest Head thereof and from thence North two Degrees Westerly until One Hundred and Twenty Miles be finished from the Mouth of Piscataqua Harbour aforesaid or until it meets with His Majestys other Governments 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; and that the Southwesterly part of the said Islands shall lye in and be accounted part of the Province of New Hampshire And that the North Easterly part thereof shall lye in, and be accounted part of the Province of the Massachusetts Bay and be held and enjoyed by the said Provinces respectively in the same manner as they now do and have heretofore held and enjoyed the same. . . ."

(3) The terms "Middle of the River" and "Middle of the Harbour," as used in the above-quoted Order mean the middle of the main channel of navigation of the Piscataqua River and



the middle of the main channel of navigation of Gosport Harbor.

(4) The middle of the main channel of navigation of the Piscataqua River, commencing in the vicinity of Fort Point, New Hampshire and Fishing Island, Maine, proceeding southward, is as indicated by the range lights located in the vicinity of Pepperrell Cove, Kittery Point, Maine, and it follows the range line as marked on the Coast and Geodetic Survey Chart 211, 8th Edition, Dec. 1, 1973.

(5) The main channel of navigation of the Piscataqua River terminates at a point whose position is latitude  $43^{\circ}02'42.5''$  North and longitude  $70^{\circ}42'06''$  West. Said point has a computed bearing of  $194^{\circ}44'47.47''$  true and a computed distance of 1,554.45 metres (1,700 yards) from the Whaleback Lighthouse, No. 19, USCG-158, whose position is latitude  $43^{\circ}03'31.213''$  North and longitude  $70^{\circ}41'48.515''$  West (reference National Geodetic Survey).

(6) The middle of the main channel of navigation of Gosport Harbor passes through a point indicated by the bottom of the BW "IS" Bell Buoy symbol as shown on Coast and Geodetic Survey Chart 211, 8th edition, Dec. 1, 1973. The position of this point is latitude  $42^{\circ}58'51.6''$  North and longitude  $70^{\circ}37'17.5''$  West as scaled from the above-described chart.

(7) The main channel of navigation of Gosport Harbor terminates at a point whose position is latitude  $42^{\circ}58'55''$  North and longitude  $70^{\circ}37'39.5''$  West. Said point has a computed bearing of  $349^{\circ}08'52.81''$  true and a computed distance of 1,674.39 metres (1,831 yards) from the Isles of Shoals Lighthouse, No. 20, USCG-158, whose position is latitude  $42^{\circ}58'01.710''$  North and longitude  $70^{\circ}37'25.590''$  West (reference National Geodetic Survey).

(8) The lateral marine boundary line between New Hampshire and Maine connecting the channel termination points described above is the arc of a great circle (appears as a straight line on a Mercator projection) whose computed length is 9,257.89 metres (10,124.53 yards).

(9) The lateral marine boundary line between New Hampshire and Maine from the Piscataqua River channel termination point proceeds toward Gosport Harbor channel





termination point on a computed bearing of  $139^{\circ}20'27.22$  true.

(10) The lateral marine boundary line between New Hampshire and Maine from the Gosport Harbor channel termination point proceeds toward Piscataqua River channel termination point on a computed bearing of  $319^{\circ}17'25.43''$  true.

(11) All positions in the preceding paragraphs are referred to the North American Datum of 1927.

(12) The boundary line delimited hereinabove is depicted by a heavy black line with the words "Maine" and "New Hampshire" above and below that line on the Coast and Geodetic Survey Chart 211, Eighth Edition, Dec. 1, 1973, filed herewith.

(13) Provision shall be made for installation and maintenance of suitable markers and/or navigation aids and devices to locate and mark the boundary as settled, subject to any applicable federal regulations, the costs of which shall be shared equally by the two States. The parties hereto shall within 180 days after the entry of this judgment file a stipulation with this Court indicating the points and locations at which such markers and/or navigation aids and devices are to be located and the kinds of markers and/or navigation aids and devices agreed upon. If the parties hereto are unable to agree upon such a stipulation, then upon the expiration of such 180 day period, application shall be made by them, or either of them, to this Court for the appointment of a Commissioner with full power to hear evidence and locate and mark the boundary as settled and make a return of his actions to this Court, the costs of which proceedings shall be shared equally by the two States.

(14) The State of Maine, its officers, agents and representatives, its citizens, and all other persons, are perpetually enjoined from disputing the sovereignty, jurisdiction and dominion of New Hampshire over the territory adjudged to her by this decree; and the State of New Hampshire, its officers, agents and representatives, its citizens, and all other persons, are perpetually enjoined from disputing the sovereignty, jurisdiction and dominion of Maine over the territory adjudged to her by this decree.

(15) The costs of this action shall be equally divided



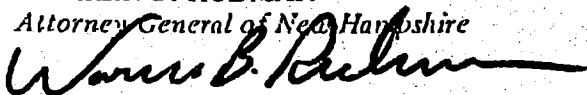
between the two States, and this case is retained on the docket for further orders, in fulfillment of the provisions of this decree.

(16) This motion is made by each State without prejudice to its claims concerning its lateral marine boundary with the other, easterly of the Isles of Shoals.

Dated: September , 1974

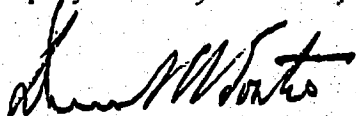
WARREN B. RUDMAN

*Attorney General of New Hampshire*



DAVID H. SOUTER

*Deputy Attorney General of New Hampshire*

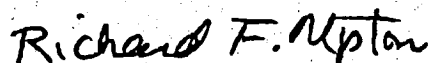


RICHARD F. UPTON

*Special Counsel*

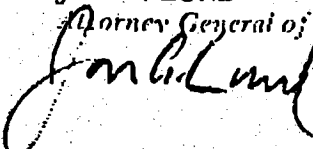
*Counsel for Plaintiff*

*The State of New Hampshire*



JON A. LUND

*Attorney General of Maine*



CHARLES R. LAROUCHE

*Assistant Attorney General of Maine*

*Counsel for Defendant*

*The State of Maine*

