

No. 130, Original

Supreme Court, U.S.

FILED

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IN THE

Supreme Court of the United States

STATE OF NEW HAMPSHIRE,

Plaintiff,

v.

STATE OF MAINE,

Defendant.

**PLAINTIFF'S REPLY TO DEFENDANT'S BRIEF
IN OPPOSITION TO MOTION FOR LEAVE
TO FILE COMPLAINT**

STATE OF NEW HAMPSHIRE

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TABLE OF CONTENTS

	<i>Page</i>
REPLY BRIEF	1
I. The 1740 Order in Council Does Not Establish the Location of the Boundary in the Harbor.	2
II. The 1976 Decree of this Court in <i>New Hampshire v. Maine</i> Does Not Bar The State Of New Hampshire's Claim.	7
APPENDIX	1a

TABLE OF AUTHORITIES

Page

Cases

<i>Anderson, Clayton & Co. v. United States</i> , 562 F.2d 972 (5th Cir. 1977), <i>reh'g. denied</i> 656 F.2d 1215, <i>cert. denied</i> 436 U.S. 944.....	8
<i>Georgia v. South Carolina</i> , 497 U.S. 376 (1990)	4
<i>Illinois v. Campbell</i> , 329 U.S. 362 (1946)	10
<i>New Hampshire v. Maine</i> , 426 U.S. 363 (1976)	7, 9
<i>New Hampshire v. Maine</i> , 434 U.S. 1 (1977)	1
<i>Oklahoma v. Texas</i> , 256 U.S. 70 (1921)	7
<i>Patriots Cinemas, Inc. v. General Cinema Corp.</i> , 834 F.2d 208 (1st Cir. 1997)	10
<i>Rhode Island v. Massachusetts</i> , 4 How. (45 U.S.) 591 (1846)	3
<i>Ryan Operations G.P. v. Santiam-Midwest Lumber Co.</i> , 81 F.3d 355 (3rd Cir. 1996)	10
<i>Texas v. Louisiana</i> , 410 U.S. 702 (1973)	4
<i>U.S. Steel Corp. v. Multistate Tax Comm'n.</i> , 434 U.S. 452 (1978)	10
<i>United States v. International Bldg. Co.</i> , 345 U.S. 502 (1952)	8, 9

Statutes and Legislative Resolves

	<i>Page</i>
Me. Resolves, 1830, c. 20	6
Me. Resolves, 1830, c. 21	6
7 N.H. Laws 247 (1803)	1

Other Authorities

2 James Stephen, <i>New Commentaries on the Laws of England</i> 461 8th ed. (1880)	3
<i>Restatement (Second) of Judgment</i> § 27 cmt. e (1982)	8
2 <i>Documents Relating to the Colonial History of the State of New Jersey</i> (William A. Whitehead ed., 1881)	3

REPLY BRIEF OF THE STATE OF N.H.

At issue in this case is the true and correct location of New Hampshire's historical boundary with Maine in the vicinity of Portsmouth Harbor. Maine asserts that in 1740 the Privy Council adjudicated the boundary as the thalweg or the mid-point of the main navigational channel through Portsmouth Harbor. Maine further claims that both New Hampshire and Maine have acted to confirm a mid-channel boundary, that this boundary has not been disputed, and that this Court adjudicated the inner harbor boundary when it affirmed the Consent Decree entered into in *New Hampshire v. Maine*, 434 U.S. 1 (1977).

Maine's argument is based on a mischaracterization of the 1740 order and the 1977 Consent Decree, neither of which adjudicated the location of the boundary within Portsmouth Harbor. Similarly, Maine's claim that a thalweg boundary has been acknowledged and undisputed by New Hampshire is contradicted by historical maps and other evidence¹ that show either confusion with respect to the location of the boundary or a belief that the entire Piscataqua River as well as all of Portsmouth Harbor are located in New Hampshire. Although disclaiming a prescriptive claim to a thalweg boundary, Maine relies almost exclusively on recent maps to confirm its claim that the boundary has always been understood to run along the thalweg.² Significantly, most of these maps date from after the time the United States Geological Survey converted what had been designated as a ship channel into a boundary line without substantiating authority.

¹ In addition to the matters discussed in New Hampshire's initial Brief at pp. 9-20, 30-31, and Complaint, ¶¶ 22-32, 35-36, and the maps contained in New Hampshire's Lodging, see Appendix A, Tables 1-7 (examples of official and popular belief and confusion as to the territorial location of islands and the harbor and New Hampshire regulation).

² The only 18th Century map submitted by Maine is a map of the Town of Kittery, which shows no boundary in the harbor. The Phineas Merrill Map of Portsmouth prepared at the direction of the New Hampshire General Court, see 7 N.H. Laws 247 (1803), also includes all the inner harbor and shipyard islands. See N.H. Map Lodging, Map No. 36.

I. The 1740 Order in Council Does Not Establish the Location of the Boundary in the Harbor.

Maine's contention that the 1740 order in council established the location of the boundary in Portsmouth Harbor depends on several assumptions, none of which are examined adequately in Maine's brief. In particular, Maine argues that the phrase "up the middle of the river" could only have been intended to divide the harbor. Thus, Maine implicitly disputes New Hampshire's contention that as of 1740 the harbor was retained by the crown and governed by New Hampshire as the representative of the crown.

The construction that Maine accords to the 1740 order is historically and legally at odds with the constitutional and legal framework surrounding the regulation of trade and the title and prerogative rights of the crown in ports, and inconsistent with maps prepared shortly after the 1740 order which show either no boundary in the harbor or a boundary running along the shore of Maine.³ Although Maine asserts that the language of the 1740 Decree allows for only one construction, e.g. a thalweg boundary, Maine fails entirely to address the evidence submitted by New Hampshire that from 1740 through the Revolution, New Hampshire continued to administer the harbor and the port entirely as part of New Hampshire, and that beginning in 1775, the independent New Hampshire government exerted exclusive jurisdiction by taking undisputed control of defense, customs, and naval regulation of the harbor and the islands.

Most significantly, Maine's virtually exclusive reliance on the argument that the language of the 1740 order admits of only one construction, ignores entirely New Hampshire's argument that under English law neither the commissioners nor the Privy Council had the authority to assign part of the port or the territory within the port to Massachusetts.⁴ Maine's

³ N.H. Map Lodging, Map Nos. 20, 22, 26, 27, 29, 30, 31, 32, 33, 34, 35.

⁴ The attachment of ports to particular colonies was within the statutory authority of the Treasury, not the Lords of Trade or the Privy Coun-

characterization of the Privy Council as the "highest tribunal in the land" is at best anachronistic. In 18th Century boundary proceedings, the Privy Council acted not as a court of general jurisdiction, but at least in part as a prerogative court whose powers were derived from the concept of royal lordship.⁵ There is no legal or historical basis for Maine's

⁴ *Cont.*

cil. An application of this division of authority may be seen in the dispute over whether the proprietors of East Jersey could establish a port at Perth Amboy, thus defeating New York's purported right to enforce customs on all shipping in the Hudson River. The proprietors' petition was referred to the English attorney general and solicitor general by the Lords of Trade for an opinion as to, "What a Port is; and by what means any place in his Majest[y's] Plantations may become a port." Letter from Secretary Popple, to the Attorney General and Solicitor General (Oct. 6, 1697), reprinted in *2 Documents Relating to the Colonial History of the State of New Jersey*, at 174 (William A. Whitehead ed., 1881) [hereinafter *Colonial Documents*]. The lawyers responded:

that a Port in our Law is understood to be a place appointed for the lading and unlading of Goods and Merchandise, for the better Collecting his Majesties Customes & other Duties, And that Such Ports [by act of 25 Charles II] are to be appointed in the plantac'ons by the Commisioners [sic] of the Customes in England by and under the authority and directions of the Lord Treasurer or Com'issioners of the Treasury, in the respective plantations, for the Collecting Such Customes as are due to his Majestie in those plantac'ons.

Answer of Attorney General and Solicitor General ... (Oct. 18, 1697), reprinted in *Colonial Documents*, at 177-78. The Lords of Trade thereupon reported to the Privy Council that "a Power of Constituting such Ports in any of His Majesties Plantations is vested by Act of Parliament in the Commissioners of his Majesties Customes...." Representation from the Lords of Trade to the Lord Justices (Oct. 27, 1697), reprinted in *Colonial Documents*, at 183. The Privy Council accordingly denied the proprietors' petition and ordered the maintenance of the status quo whereby New York collected duties on all shipping. Order of Council ... (Nov. 25, 1697), reprinted in *Colonial Documents*, at 200. There was no significant change in the statutory provisions for the appointment or governance of colonial ports between 1697 and 1740. The Privy Council did not have judicial or administrative authority over the Treasury.

⁵ See 2 James Stephen, *New Commentaries on the Laws of England* 461 (8th ed. 1880). See also *Rhode Island v. Massachusetts*, 4 How. (45 U.S.) 591, 634 (1846) (The 1740 order "was not governed by legal principles,

assumption that the Privy Council could or would have awarded part of a port to Massachusetts, title to which lay with the crown and jurisdiction over which lay with the Treasury by act of Parliament. The 1740 order cannot be construed as appointing part of Portsmouth Harbor to the jurisdiction (or much less, the ownership) of Massachusetts, either as a judicial or executive act.

Maine also argues that in the appeal from the report of the boundary commissioners, New Hampshire interpreted the report as giving "half" of the harbor to Massachusetts. As to New Hampshire's initial understanding of the boundary commissioners' report, it should be noted that the location of the boundary through Portsmouth Harbor was not a contested issue before the boundary commissioners,⁶ that even if the report were construed as "dividing" the port the reference to "half" of the river does not support an inference that a thalweg boundary was intended,⁷ and that as initially configured Seavey's Island was closer to New Hampshire than to Maine and that a division by geographic middle would have placed the greater part of Seavey's Island in the Province of New

⁵ *Cont.*

but was an exercise of the king's prerogative; ... so that [it does not] constitute a rule in other cases for the action of a court of law.")

⁶ New Hampshire and Maine submitted substantially similar descriptions of that portion of the boundary to the boundary commissioners. Both provinces described the boundary as "beginning at the entrance of Piscataqua Harbour" and passing up the same "into the River Newichwannock and through" the Newichwannock "to the furthest head...."

⁷ See *Texas v. Louisiana*, 410 U.S. 702, 711 (1973). Maine's argument (Maine Brief at 27 n. 18) that the thalweg was the presumptive meaning of "middle" in 1740 is without support. The thalweg concept as applied to American state boundary disputes is derived from international law and based on the interest of independent states in preserving access to navigation; it is generally inapplicable where access to navigation is otherwise assured. As between English colonies, with respect to which navigation was entirely controlled by the home government, there is no basis for any inference that a thalweg boundary was contemplated. See *Georgia v. South Carolina*, 497 U.S. 376, 394-96 (1990).

Hampshire. At the very least, the ambiguous language of the decree, as well as the brevity of the references in the appeal, gives rise to questions concerning its meaning that cannot be summarily decided.

The record before the boundary commissioners also provides no basis for inferring that New Hampshire's agent who prepared the exceptions to the commissioners' report understood the intention of the boundary commissioners. Similarly, the appellate record, along with the maps submitted to the Privy Council, does not support the inference that the Privy Council meant to adopt the construction now advanced by Maine. Significantly, the surveyed map of the eastern boundary prepared by Walter Bryant in "strict accordance" with the instructions issued to Governors Belcher and Wentworth to "survey the boundary" does not show a boundary line through the harbor.⁸ Likewise, the surveyed map of the eastern boundary prepared by Robert Fletcher in 1768, with the advice of Walter Bryant and instructions from the King's surveyor general, also does not show a boundary line though the harbor.⁹

Set beside other indicia of the intended meaning of this phrase, such as the Privy Council's later approval of New Hampshire's county establishment that included the Piscataqua River within the boundaries of Rockingham County, the statements quoted by Maine do not support Maine's conclusion that the 1740 order adjudicated a thalweg boundary through Portsmouth Harbor. Ultimately in determining the intent of the 1740 boundary decision, the most reliable evidence is the historical record that shows New Hampshire's exclusive governance of the harbor, including defense, navigation and customs, from 1740 through 1789.

Maine also cites the 1828 Boundary Report as evidence of its claim that a thalweg boundary was accepted and undisputed after 1740. Although the preface to the report quotes

⁸ N.H. Map Lodging, No. 21.

⁹ N.H. Map Lodging, No. 27.

the 1740 order in full, the actual description of the boundary recites that it “pass[es] up through the mouth of Piscataqua Harbor, *and up the middle of the river of Newichwannock*, part of which is now called the Salmon Falls, and through the middle of the same to the furthest head thereof....” (emphasis added). The omission in the 1828 report of the very phrase upon which Maine relies (“up the middle of the [Piscataqua] river”) refutes Maine’s inference that the 1828 report memorialized a *thalweg* boundary.¹⁰ Moreover, while Maine claims that a *thalweg* boundary was generally understood and undisputed in 1828, the official Greenleaf map of the state of Maine, published in 1829, depicts the boundary as running along the shore of Maine, and the islands as located in New Hampshire.¹¹

Maine cannot argue that *res judicata* applies to the 1740 order because it cannot demonstrate that New Hampshire’s claim to its harbor was adjudicated as a matter of legal right in that proceeding. New Hampshire’s present claim derives in part from rights exercised as a royal province and obtained as the successor to the crown at the Revolution, through its assertion of exclusive jurisdiction over defense, navigation, and customs. In view of the undisputed evidence referred to in New Hampshire’s initial brief, not only as to its *de facto* control of the harbor after 1775 but also as to its militant exercise of that control in defiance of challenges by citizens of Massachusetts, *res judicata* cannot apply unless the 1740 order is construed to have divested not only New Hampshire

¹⁰ The 1858 and 1874 boundary commission reports also omit the phrase “up the middle of the [Piscataqua] river” from their descriptions of the eastern boundary.

¹¹ N.H. Map Lodging, No. 40. By two Resolves passed in 1830, Maine resolved to disseminate Greenleaf’s map to governmental bodies, including Congress, and also resolved to purchase and disseminate 400 copies of the Greenleaf map to each incorporated town in Maine. Me. Resolves, 1830, c. 20, c. 21. In 1837, Maine passed another Resolve to obtain additional copies of the Greenleaf map to distribute to all towns not then possessing one. Me. Resolves, 1837, c. 44.

but the crown as well of its rights in the harbor on the Maine side of the thalweg. This construction of the order is wholly unwarranted.

II. The 1976 Decree of this Court in New Hampshire v. Maine Does Not Bar The State Of New Hampshire's Claim.

Maine argues that this Court's opinion and consent decree in the lateral marine boundary case bars the claim in this case under principles of issue preclusion, claim preclusion and judicial estoppel, notwithstanding that the part of the boundary determined in that case was different than the part to which New Hampshire's instant claim relates, and notwithstanding that no issue relevant to the instant case was actually litigated in the prior proceeding.

As Maine acknowledges, the lateral marine boundary case concerned the location of a particular stretch of boundary running seaward to the Isles of Shoals from the mouth of the harbor. In that case, the parties stipulated as to the exact location of that boundary and as to its derivation from the 1740 order in council. No dispute was actually decided by this Court as to the meaning or effect of the 1740 order in council.

In the lateral marine case, the Court assumed that the 1740 order fixed the boundary, as the parties stipulated, and entered the consent decree as to the location of the boundary without actually deciding the issues on which the decree was based. The inclusion of a recital in the decree as to the rule to be applied in locating the boundary is not conclusive in a subsequent case dealing with a different part of the boundary unless the matter was "put in issue and directly determined" in the former case. *Oklahoma v. Texas*, 256 U.S. 70, 85 (1921). Because the 1977 Decree was entered by consent of the parties, the Court refrained from making any rulings of its own on the issues presented by the case. *New Hampshire v. Maine*, 426 U.S. 363, 369 (1976).

It is a well established principle of law that neither issue preclusion nor collateral estoppel applies to judgments entered by consent of the parties unless there is an actual adjudication of law or fact by the court.¹² The record in the lateral marine boundary case shows that the parties intended by the consent decree only to resolve their claims as to the boundary seaward of the harbor mouth.¹³

Maine asserts that the issue of the meaning of the 1740 order was actually litigated in the lateral marine boundary case because New Hampshire raised the issue in its brief. Maine Br. at 24. That an issue is raised, however, has never been held to be sufficient to support is-

¹² *United States v. International Bldg. Co.*, 345 U.S. 502, 506 (1952):

A judgment entered with the consent of the parties may involve a determination of questions of fact and law by the court. But unless a showing is made that that was the case, the judgment has no greater dignity, so far as collateral estoppel is concerned, than any judgment entered only as a compromise of the parties.

See also Anderson, Clayton & Co. v. United States, 562 F.2d 972, 993 (5th Cir. 1977), *reh'g. denied* 656 F.2d 1215, *cert. denied* 436 U.S. 944 (Consent decree containing recitals as to facts that had been contested did not have issue preclusive effect. "The presumption is that an issue resolved by stipulation or concession in one suit is not conclusively established in a subsequent suit on a different cause of action unless it is clear that the parties so intended."); *Restatement (Second) of Judgment* § 27 cmt. e (1982) ("In the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated. Therefore, the rule of this Section [issue preclusion] does not apply with respect to any issue in a subsequent action.").

¹³ *See* Maine's Brief in Opposition to Motion to Intervene, Oct. 11, 1974, at 4 ("The only property involved in this action is that which lies beneath the water in the disputed area"); New Hampshire's Brief in Opposition to Motion to Intervene, Oct. 21, 1974, at 4 ("the proposed boundary line as it leaves Piscataqua Harbor follows the center of the channel of navigation"); Joint Motion for Entry of Final Order, July 22, 1977, at 1 ("the delimitation of the lateral marine boundary on nautical charts, in accordance with the nautical chart filed with the United States Supreme Court in conjunction with the Decree [showing a boundary beginning at the harbor mouth] will be sufficient publication of the Court's decision...").

sue preclusion; rather, the issue must have been actually or implicitly decided as a necessary basis for the judgment. Maine further argues that the principle of claim preclusion “bars a litigant from raising ... issues on matters which *should have been raised* in prior litigation,” regardless of whether they were actually adjudicated. Maine Br. at 24 (emphasis added). This assertion is unsupported by the cases cited. Rather, it is established that issues, as opposed to claims, are precluded only if actually decided. See *International Building Co.*, 345 U.S. at 506. Claims to two different parts of a state boundary have been treated as separate claims for purposes of res judicata, even if their location depends on construction of the same document. *Oklahoma v. Texas*, 256 U.S. at 87-88. The judgment in the lateral marine boundary case, fixing the boundary seaward of a specified point in the inner harbor mouth, would in no way be changed or rendered ineffective by any determination in this case as to the boundary in the inner harbor itself.¹⁴

Maine also argues that this Court did decide the underlying issues of the meaning and effect of the 1740 order, because it had a “constitutional duty to adjudicate the law and facts” underlying the decree. Maine Br. at 24. To the contrary, in affirming the *Consent Decree*, this Court expressly rejected New Hampshire’s argument that it could not approve the decree without an independent determination of the legal principles on which it was based. 426 U.S. at 369. As the Court subsequently explained, approval of the lateral marine boundary consent decree was consistent with its constitutional functions not because the Court actually decided the underlying issues, but because the nature of the dispute was such that its settlement by agreement posed no potential for an

¹⁴ The boundary shown by Belknap on his 1791 map of New Hampshire runs up through the middle of the closing line of Portsmouth Harbor and then turns to run roughly along the shore of Maine. N.H. Map Lodging, Map. No. 33.

increase in the power of a state that might encroach on federal sovereignty. *U.S. Steel Corp. v. Multistate Tax Comm'n.*, 434 U.S. 452, 471 (1978).

Finally, Maine argues that judicial estoppel should preclude New Hampshire from asserting a theory inconsistent with that asserted in the lateral marine boundary case. Judicial estoppel applies only when a party asserts a position on a disputed issue in order to obtain an advantage over an opposing party in prior litigation, and only when "intentional self-contradiction is being used as a means of obtaining unfair advantage in a forum provided for suitors seeking justice." *Patriots Cinemas, Inc. v. General Cinema Corp.*, 834 F.2d 208, 212 (1st Cir. 1997) (internal citation and quotation omitted). The doctrine of judicial estoppel is "an extraordinary remedy to be invoked when a party's inconsistent behavior will otherwise result in a miscarriage of justice." *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 365 (3rd Cir. 1996).

In the lateral marine boundary case, New Hampshire did not assert an inconsistent position in bad faith or to Maine's disadvantage.¹⁵ Moreover, as this Court has recognized "ordinarily the doctrine of estoppel or that part of it which precludes inconsistent positions in judicial proceedings is not applied to states." *Illinois v. Campbell*, 329 U.S. 362, 369 (1946). The 1977 boundary settlement was negotiated based on information then available to the State's legal counsel and with due consideration for the respective interests of New Hampshire and Maine in their lateral marine boundary. Accordingly, the doctrine of judicial estoppel should not be applied so as to prevent New Hampshire from litigating the location of the inner harbor boundary based on all relevant historical and legal principles.

¹⁵ As noted in New Hampshire's Brief (N.H. Br. at 8 n. 16), the historical and legal issues relevant in determining the harbor boundary are different from those considered in the lateral marine boundary case. Unlike the lateral marine boundary case, evidence of New Hampshire's regulation of the harbor is probative as to its territorial rights because New Hampshire's authority to regulate derived exclusively from its territorial rights over the harbor and port.

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APPENDIX

TABLE 1
EXAMPLES OF 19TH CENTURY DESCRIPTIONS OF THE PISCATAQUA RIVER

Publication or Record Date	Description	Source
1849	The "Piscataqua River, the only large river, the whole course of which is in New Hampshire, is formed by the junction of several small streams in a wide a deep bed; hollowed out partly by them, and partly by the tide. . . ."	John Hayward, <i>A Gazetteer of New Hampshire . . .</i> (Boston 1849), p. 174
1874	"Piscataqua River the only large river whose entire course (after it receives its name) is in New -Hampshire, is formed by the junction of several smaller rivers in a wide and deep bed, hollowed out partly by these rivers and partly by the flow of the tide."	Alonzo J. Fogg, <i>The Statistics and Gazetteer of New Hampshire . . .</i> (Concord, 1874), p. 593
1857	"Piscataqua River, the only large river which is wholly in New Hampshire, is formed by the junction of several streams, which unite in a broad channel hollowed out partly by them and partly by the tide."	Edwin Charlton, <i>New Hampshire as It Is</i> (Claremont, 1857), p. 467

TABLE 2 - EXAMPLES OF WRECK REPORTS

Date	Record Type	Item	Bibliographic Data
1894	Wreck Report	Schooner is stranded at "Kittery Point N.H."	Mss. Copies of Wreck Reports, Gloucester, Massachusetts, 1904-1911, p. 85, RG-26, US Coast Guard, National Archives Northeastern Headquarters, Waltham, MA
1912	Wreck Report	Schooner is stranded at "Sister's Rock, Portsmouth, NH"	Mss. Copies of Wreck Reports, Rockland, Maine, 1903-1912, p. 108, RG-26, US Coast Guard, National Archives Northeastern Headquarters, Waltham, MA
1916	Wreck Report	Schooner's "compass attracted 1 point" at "Western Sisterledge, Portsmouth"	Mss. Copies of Wreck Reports, Portsmouth, New Hampshire, 1910-1940, p. 14, RG-36 [26], US Coast Guard, National Archives Northeastern Headquarters, Waltham, MA
1920	Wreck Report	Sailing Ship suffers "broken foremast" at the locality "U.S. Navy Yard Portsmouth"	Mss. Copies of Wreck Reports, Portsmouth, New Hampshire, 1910-1940, p. 19, RG-36 [26], US Coast Guard, National Archives Northeastern Headquarters, Waltham, MA

TABLE 3
EXAMPLES OF CORPS OF ARMY ENGINEERS
HARBOR IMPROVEMENT REPORTS

Publication or Record Date	Item	Source
1873	Annual Report of the Sec. Of War; Rep't from Corps of Army Engineers; Survey of Portsmouth Harbor, New Hampshire; part of Annual Report of the War Dept., Corps of Army Engineers	House Exec. Doc. 1, Serial Set No. 1637, pp. 342-44
1899	Examination of Pull-and-Be-Damned Point, Portsmouth, N.H.	Letter from the Secretary of War, Dec. 4, 1899, 56 th Cong., 1 st Sess., House Doc. No. 39, Serial Set No. 3954
1901	Examination and Survey of Henderson's Point, Portsmouth Harbor, New Hampshire	Letter of the Secretary of War, Dec. 29, 1900, 56 th Cong., 2 nd Sess., House Doc. 263, Serial Set No. 4155

TABLE 3, *Continued*

Publication or Record Date	Item	Source
1902	Naval appropriation act of March 3, 1901, "Public Works,' Portsmouth, Navy-yard, Portsmouth, N.H." directs the Sec. of Navy to prepare specifications and gather proposals to remove Henderson's Point. Letter of Jan. 8, 1902 from Bureau of Docks and Yards refers to area as "Henderson's Point, near the navy-yard, Portsmouth, N.H." Bidders refer to Henderson's Point as on the United States Navy Yard of Navy Yard, Portsmouth, NH	Henderson's Point, Portsmouth, N.H., Letter of the Secretary of the Navy, Jan. 11, 1902, 57 th Cong., 1 st Sess., House Doc. No. 243
1948	Review of reports, 1878-1909, on Portsmouth Harbor, N.H. and the Piscataqua River, N.H. (Letter from US House Pub. Works Chrmn. to OCE). Describes Portsmouth Harbor, NH geographically and as part of a river system; reviews Portsmouth Harbor improvement studies since 1873. Includes "portion" of Gangway Rock, SW point of Badger's Island, and Boiling Rock	1949 project file, National Archives, Waltham, box 67, Portsmouth Harbor and Picataqua River project, Corps of Army Engineers

TABLE 4
EXAMPLES OF BIRTHS OCCURRING AT NAVY YARD
REGISTERED IN PORTSMOUTH, N.H.

Date	Name	Parents and Comments	Source
12-15-1864	Alice H. Anderson	Edward N. Anderson	Ms. Ledger, Record of Marriages, Births, Deaths. 1861-1886. Vol. 2, City Clerk's Office, Portsmouth, NH
5-17-1885	John Patrick McCaffery	John McCaffery	Ms. Ledger, Record of Marriages, Births, Deaths. 1861-1886. Vol. 2, City Clerk's Office, Portsmouth, NH
11-28-1886	Henry Edward McCaffery	John McCaffery	Ms. Ledger, Record of Marriages, Births, Deaths. 1861-1886. Vol. 2, City Clerk's Office, Portsmouth, NH
05-27-1911	Alexander A. Vandergrist, Jr.	Alexander A. Vandergrist, Jr.	Record of Births, 1911-1913, City Clerk's Office, Portsmouth, NH
06-18-1911	[Male baby] Stillborn	Chester H. Bascomb	Record of Births, 1911-1913, City Clerk's Office, Portsmouth, NH

TABLE 4, *Continued*

Date	Name	Parents and Comments	Source
10-04-1911	Ethel Garnett Ryder	Ray W. Rider	Record of Births, 1911-1913, City Clerk's Office, Portsmouth, NH
10-09-1912	Thomas Horton Stone	Raymond Stone	Record of Births, 1911-1913, City Clerk's Office, Portsmouth, NH
03-21-1918	[Male baby] Howard	Herbert Seymore Howard	Record of Births, 1917-1919, City Clerk's Office, Portsmouth, NH
03-21-1918	Morris M. McCauley		Births Registered in the City of Portsmouth, 1912-1937, City Clerk's Office, Portsmouth, NH

TABLE 5
EXAMPLES OF DEATHS OCCURRING AT THE NAVY YARD
REGISTERED IN PORTSMOUTH, NH

Date	Name	Source
12-6-1874	Margaret L. Hooser	Ms. ledger, Record of Deaths, 1887-1911, p. 76, City Clerk's Office, Portsmouth, NH
1-28-1887	Philip C. Johnson	Ms. ledger, Record of Deaths, 1887-1911, p. 1, City Clerk's Office, Portsmouth, NH; Kittery town report for year ending 3-10-1887, p. 3
2-3-1887	William C. McCaffery	Ms. ledger, Record of Deaths, 1887-1911, p. 1, City Clerk's Office, Portsmouth, NH; Kittery town report for year ending 3-10-1887, p. 3
12-2-1888	George H. Hooper	Ms. ledger, Record of Deaths, 1887-1911, p. 76 City Clerk's Office, Portsmouth, NH
3-18-1888	Thomas H. Eastman	Ms. ledger, Record of Deaths, 1887-1911, p. 76 City Clerk's Office, Portsmouth, NH

TABLE 5, *Continued*

Date	Name	Source
8-28-1890	Edward H. Higbee	Ms. ledger, Record of Deaths, 1887-1911, City Clerk's Office, Portsmouth, NH; Kittery town report for year ending 3-9-1891, p. 27
11-4-1891	Arthur R. Yates	Ms. ledger, Record of Deaths, 1887-1911, p. 44, City Clerk's Office, Portsmouth, NH; Kittery town report for year ending 3-11-1892, p. 27
1-15-1902	Minnie M. Sewell	Ms. ledger, Record of Deaths, 1887-1911, p. 153, City Clerk's Office, Portsmouth, NH; Kittery town report for year ending 1-15-1902, p. 46
12-1-1911	Willis B. Mathes	Ms. ledger, Record of Deaths, 1887-1911, p. 259, City Clerk's Office, Portsmouth, NH; Ms. Rockingham County Probate Record of Willis B. Mathes

TABLE 6
EXAMPLES OF CHILDREN LIVING AT THE NAVY YARD
WHO ATTENDED PORTSMOUTH SCHOOLS

Date of Record	Item	Source
1880	Chistina Adele Zara is admitted on July 3, 1880 to Portsmouth High School	Ms. ledger, Portsmouth High School. 1878-1889
1881 (c. 1881)	H[arry] D. Yates is a Second Division student in school in Ward Two	Ms. ledger Ward Two. Second Division. 1873-1882.
1881	Henry Delnoe Wilson is admitted to Portsmouth High School in 1881	Ms. ledger, Portsmouth High School. 1878-1889
1881	J.M. Stewart is student at Ward Two. Second Division School	Ms. Ledger, Ward Two. Second Division, 1873-1882
1881	H[arry] Yates enters Jones Grammar School	Ms. ledger, Jones Grammar School. Second Division. 1882-1888, rear of volume
1882 (c. 1882)	K. Killian is student at Jones Grammar School. Second Division	Ms. ledger, Jones Grammar School. Second Division, 1882-1887
1884	Adelaide Munson Merriman is admitted to Portsmouth High School in 1884	Ms. ledger, Portsmouth High School. 1878-1889
1887	Lillie Hebb is a student at Jones Grammar School. First Division	Ms. ledger, Jones Grammar School. First Division. 1885-1888, rear of volume
1887	Kate Bradford is a student at Jones Grammar School	Ms. ledger, Jones Grammar School. First Division. 1885-1888, rear of volume
1887	Annie McCaffery is a student at Jones Grammar School. First Division	Ms. ledger, Jones Grammar School. First Division. 1885-1888, rear of volume

TABLE 6, Continued

Date of Record	Item	Source
1887	Hopewell Hebb is a student at Cabot Street School. Sixth Division	Ms. ledger, Cabot St. School. Sixth Division, 1878-1887
1888	John Critchley is a student at Walker School, Second Division	Ms. ledger, Walker School. Second Division. 1881-1888
1889 (c. 1889)	Philip Wayland Delano is student at Portsmouth High School	Ms. Ledger, Portsmouth High School, 1889-1898, pp. 100-101
1889 (c. 1889)	Frederick Henry Delano is student at Portsmouth High School	Ms. Ledger, Portsmouth High School, 1889-1898, pp. 50-51
1889 (c. 1889)	Ruth Gibson is a student at Portsmouth High School	Ms. ledger, Portsmouth High School, 1889-1898, p. 19
1890	Mary Frances Donohue is admitted to Portsmouth High School	Ms. Ledger, Portsmouth High School. 1880-1898, p. 49
1893	Perle Ethelyn Goodsoe is admitted to Portsmouth High School	Ms. ledger, Portsmouth High School, 1889-1898, p. 187
1893	Adolphus Eugene Watson is admitted to Portsmouth High School	Ms. ledger, Portsmouth High School, 1889-1898, p. 19
1893	Leonora Goodsoe is admitted to Portsmouth High School	Ms. ledger, Portsmouth High School, 1889-1898, p. 187
1895	Anita Gibson is admitted to Portsmouth High School	Ms. ledger, Portsmouth High School, 1889-1898, p. 275

TABLE 6, Continued

Date of Record	Item	Source
1896	William Butler Remy is admitted to Portsmouth High School	Ms. ledger, Portsmouth High School, 1889-1898, p. 329
1896	Catherine Gibson is in 7 th grade, Farragut School	Ms. Farragut School Register for year ending 12-18-1896
1897	Bernard E. Schreiter is in fifth grade, Farragut School	Ms. Farragut School register for year ending 6-25-1897
1898	Mary Remy is admitted to Portsmouth High School	Ms. ledger, Portsmouth High School, 1898-1903, p. 33
1899	Normaine Derr is admitted to Portsmouth High School	Ms. ledger, Portsmouth High School, 1898-1903, p. 71
1899	William John Flanigan is admitted to Portsmouth High School	Ms. ledger, Portsmouth High School, 1898-1903, p. 73
1900	Horace U. Ransom is admitted to Portsmouth High School	Ms. ledger, Portsmouth High School, 1898-1903, p. 117
1900	Catherine G. Stephenson is admitted to Portsmouth High School	Ms. ledger, Portsmouth High School, 1898-1903, p. 113

TABLE 7
EXAMPLES OF N.H. AND MASSACHUSETTS POST-INDEPENDENCE
NAVAL REGULATION AND REVOLUTIONARY MILITARY OCCUPATION

Date of Record	Item	Source
1776 (N.H. Naval Regulation)	N.H. House of Representatives appointment of Eleazer Russell as "maritime officer for the Port of Piscataqua"	N.H. State Papers, Vol. 8, p. 363 (1776)
1776 (Ma. Naval Regulation)	Establishment of Massachusetts Naval Office in the "several seaports of Boston, Salem, Marblehead, Gloucester, Newburyport, York, Pepper[r]elboro[ugh], Falmouth in Casco Bay, Townsend, Penobscot, Goldsborough, Machias, Plymouth, Barnstable, Dartmouth and the island of Nantucket, within this state, there be an office kept, to be called and known by the name of the naval office, for the purpose of entering and clearing of ships and other vessels trading to or from this state...."	5 Acts and Resolves, Public and Private of the Province of Massachusetts Bay 600, 603 (1776)

TABLE 7, Continued

Date of Record	Item	Source
1778 (N.H. Naval Regulation)	N.H. Council and House of Representatives appointment of Eleazer Russell as "naval officer for the Port of Piscataqua."	N.H. State Papers, vol. 8, p. 805 (1778)
1778 (N.H. Naval Regulation)	N.H. Act established naval office for the Port of Piscataqua. Naval officer to give certificates of clearance permitting vessels "to sail out of the port of Piscataqua...."	4 Laws of N.H. 184 (1778)
1782 (Ma. Naval Regulation)	Naval officers elected for the following ports in Massachusetts: Boston, Salem, Plymouth, Gloucester, Marblehead, Newbury Port, York, Pepperrelboro', Falmouth, Townsend, and Barnstable. "Choice for Dukes and Nantucket postponed."	Joint Ballot of the two houses of the Massachusetts General Court, Supplement to the Mass. Acts and Resolves 115 (May 6, 1782)
1778 (N.H. Military Occupation)	Petition to N.H. Council and House of Representatives to request increase in wages submitted by "us the soldiers belonging to the company commanded by Capt. Eliphalet Daniel, stationed at Fort Sullivan within the state aforesaid...."	N.H. State Papers, vol. 15, pp. 430-431

