

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

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STATE OF NEW HAMPSHIRE,

*Plaintiff,*

v.

STATE OF MAINE,

*Defendant.*

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**APPENDIX TO PLAINTIFF'S BRIEF IN RESPONSE TO  
BRIEF FOR THE UNITED STATES AS AMICUS CURIAE**

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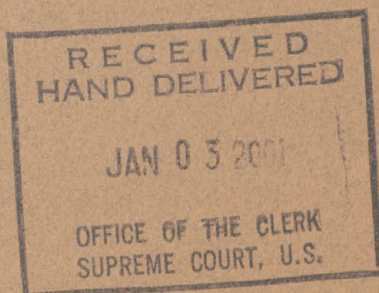
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1753  
 Down to October 26 we the ship before being destroyed by  
 the Company of the Province of the North for Bay to take a  
 survey of the South & Branches of the Delaware fall River  
 above for the purpose of a new stock (old) to be run have been  
 the same as before (I mean) on the plan  
 James Bowen  
 James Robertson  
 James  
 1753  
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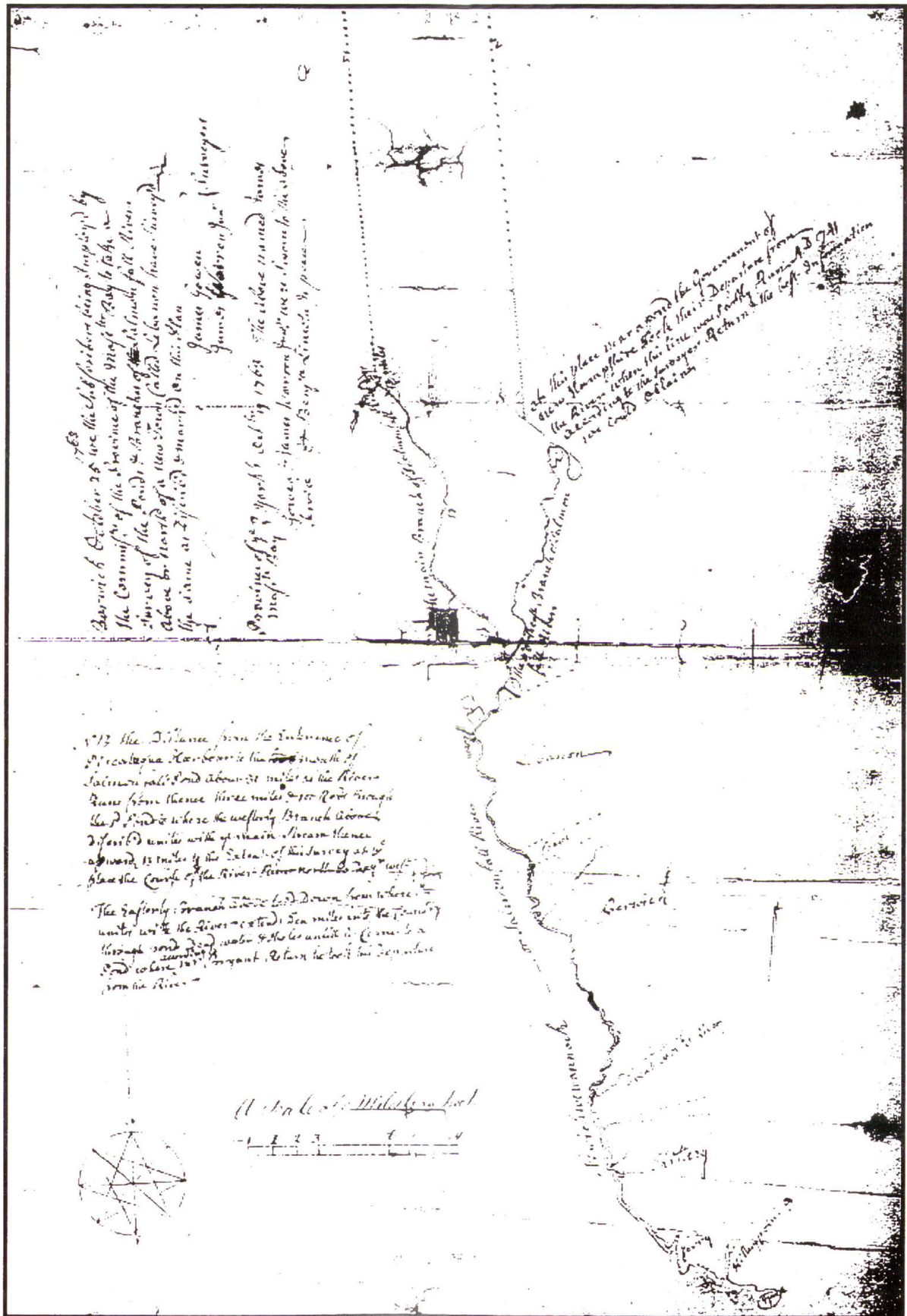
At this place near a pond the Government of  
 the Province took their departure from  
 the River when this line was partly run  
 according to the Survey Return the left information  
 was sent Captain

1753 The Distance from the Entrance of  
 the Delaware River to the mouth of  
 the South Branch is about 30 miles to the River  
 from thence three miles to the River through  
 the South Branch where the western Branch crosses  
 the South Branch with a main stream thence  
 about 12 miles to the Mouth of the Survey at  
 place the Centre of the River River North to Bay with

The Eastern Branch is led down from where  
 it meets the River to extend Sea miles with the River  
 through some small water to the Sea until it comes to a  
 small bay where it turns to the left and runs down  
 the River

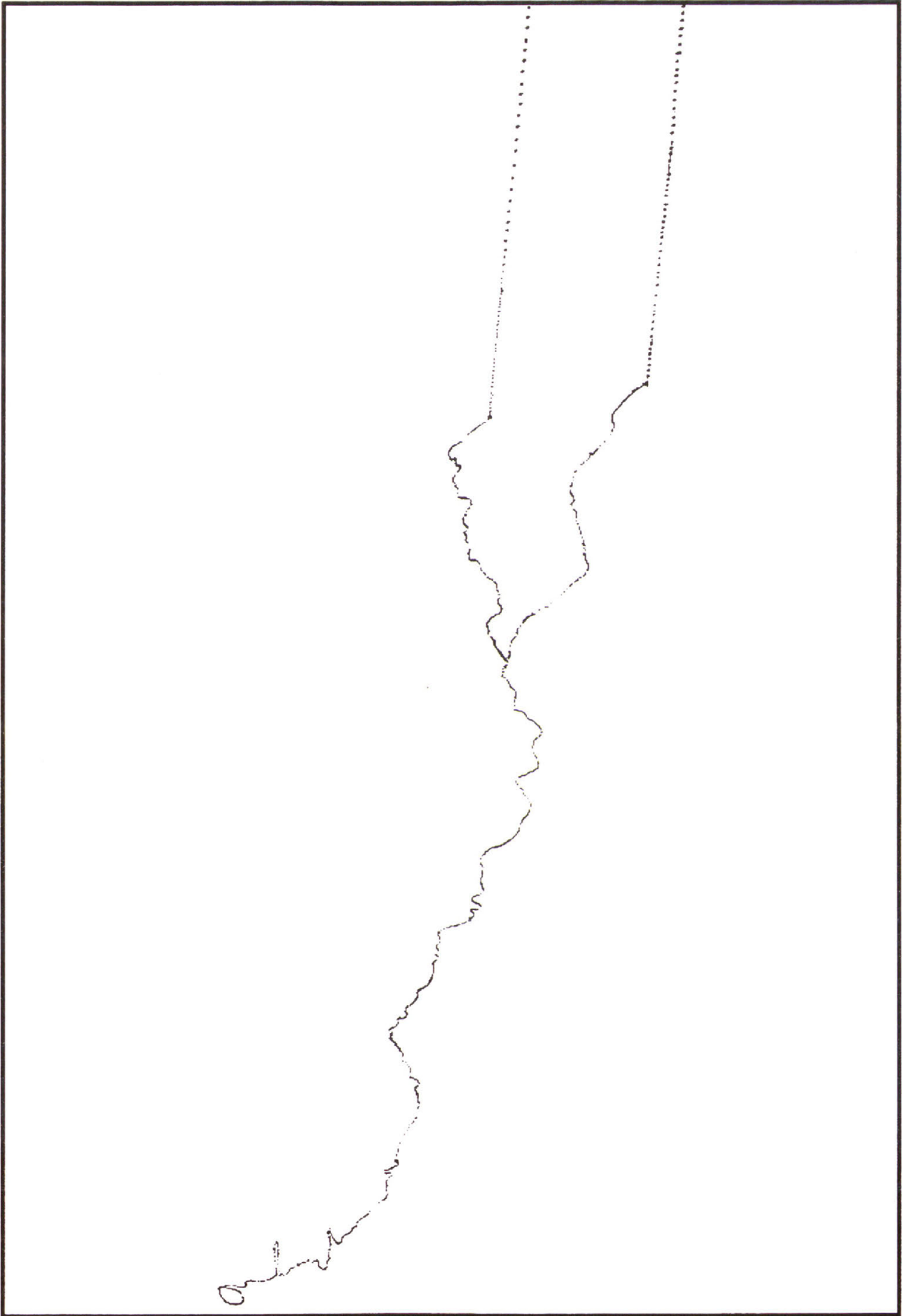
A scale of Miles

1 2 3 4













# FEDERAL DOCUMENTS CONCERNING PORTSMOUTH HARBOR, NEW HAMPSHIRE

DATE	DOCUMENT	NOTE
1780 – 1781	<i>Journals of the Continental Congress, 1780-1781</i>	<p>The United States commissioned the building of the Continental ship <i>America</i> during the Revolutionary War in Portsmouth, New Hampshire. The <i>America</i> was built on Langdon's Island [now Badger's Island].</p> <p><i>Journals of the Continental Congress:</i></p> <p><u>March 29, 1780, p. 316:</u> The Board of Admiralty states that [John] Langdon (of Portsmouth, New Hampshire) writes that he needs money to complete the 74-gun ship, the building of which he directs.</p> <p><u>Nov. 27, 1780:</u> Congress requests that the Board of Admiralty "lay before Congress an account of the expence hitherto accrued in building the continental ship America, at Portsmouth, and an estimate of the expence of completing her hull . . ."</p> <p><u>May 16, 1781, p. 508:</u> Congress resolves that Mr. Jay is authorized to dispose of the hull of the "74 gun ship now on the stocks at Portsmouth in the State of New Hampshire, together with such timber and other materials as are prepared for building her, to his Catholic Majesty . . ."</p> <p><u>June 23, 1781:</u> Robert Morris is authorized and directed to take measures "for the speedily launching and equipping for sea the ship America, now on the stocks at Portsmouth, in New Hampshire . . ."</p> <p>George Henry Preble, Rear Admiral, U.S.N., <i>History of the U.S. Navy Yard, Portsmouth, N.H. Prepared by Order of the Hon. Secretary of the Navy, under the Bureau of Yards and Docks</i> (Washington: Gov't Printing Office, 1892), p. 15.</p> <p>"On the 9<sup>th</sup> of November 1776, Congress Ordered 'the building or purchase of three ships of seventy-four guns,' besides several frigates and vessels of smaller dimensions. The keel of one of these ships was laid in Boston, and some progress was made in her construction, but the only one that was completed and launched was the <i>America</i>, 74, built at Portsmouth, N.H. She was not only the first ship of the line, but the first ship of that class ever built on the continent, of which we have knowledge. Soon after the order of Congress her keel was laid on the northwest end of an island called Rising Castle, long known as Langdons or Governors Island, and now called Badgers Island, where the ways on which she rested are still to be seen."</p> <p>The Continental Congress in its sessions referred to ship building on Langdon's Island as occurring in Portsmouth, New Hampshire.</p> <p><i>See Location Reference Map, App. at 20a.</i></p>



DATE	DOCUMENT	NOTE
1793	<i>Journal of the US Senate</i> , p. 477, Jan. 31, 1793	The petition of a number of the ship owners and masters, insurers and traders, of the town of Portsmouth, in the state of New Hampshire, was read, stating the expediency of erecting a light-house, and placing buoys and beacons, at the entrance of the river leading to the said town.
1795	Ms. US vs. Sloop Endeavor, Final Record Book, USDNH, pp. 17-18, RG 21	Case of smuggling. Port of Portsmouth placed entirely in New Hampshire.
1795	Ms. US vs. Francis Bakeman, Final Record Book, USDNH, 1795, pp. 14-15	Port of Portsmouth placed entirely in New Hampshire.
1795	Ms. US vs. Sloop Endeavor, Final Record Book, Case Files, USDNH, pp. 25-26, RG 21	Customs District of Portsmouth and Port of Portsmouth placed in New Hampshire and within the jurisdiction of the US District Court for the District of New Hampshire.
1799	"Action between the Constellation and La Vengeance. Naval Force in 1799," <i>American State Papers</i> , 6 <sup>th</sup> Cong., 3d Sess., No. 18, p. 71, March 2, 1799	In a "Statement of vessels . . . to which commissions as private armed vessels have been issued by the Secretary of State, and by the Collector of Customs under his direction, from the 9 <sup>th</sup> day of July 1798, to the dates respectively shown below," there is listed for the District of Portsmouth, State of New Hampshire, one vessel with six carriage guns, and a crew of 10, dated Jan. 22, 1799.
1801	"Naval Establishment, and Its Expenses. Communicated to the House of Representatives, January 15, 1801," <i>American State Papers</i> , 6 <sup>th</sup> Cong., 2 <sup>nd</sup> Sess., No. 21, p. 74, Jan. 15, 1801	The report states, "Ground has been purchased at Portsmouth, New Hampshire, Charlestown, (near Boston) Philadelphia, the city of Washington, and Norfolk; and measures have been taken to procure ground at New York, for capacious building and dock yards and progress is making in preparing docks for receiving . . . timber, and wharves for building . . . ships." The Navy Department lists the five sites, which include Portsmouth, New Hampshire and Charlestown, Massachusetts where Congress has located Navy Yards.
1801	<i>Appendix to the Congressional Globe, for the First Session, Twenty-Fourth Congress: Containing Speeches and Important State Papers</i> (Washington: Printed at the Globe Office for the Editors, 1836). See the remarks of Maine Representatives F.O.J. Smith (Feb. 10, 1836, pp. 81-82), George Evans (March 15, 1836, pp. 548-53), and Leonard Jarvis (April 4, 1836, pp. 265-71), and the speech of Virginia Congressman J. Garland (April 1, 1836, pp. 241-47).	Three Maine Congressmen (George Evans, Leonard Jarvis, and F.O.J. Smith) refer to the Navy Yard's New Hampshire location. They urge the Government to not abandon the site because Maine needs the New Hampshire yard and New Hampshire's Portsmouth Harbor defenses to help protect its long Atlantic coast (pp.552, 241-42, and 265-66). Maine, they complain, possesses no US navy yard. They state that Maine has many harbors vastly superior to the one in New Hampshire that housed the Portsmouth Navy Yard. Portsmouth Harbor, Jarvis observed, is New Hampshire's only port, its "ewe lamb." (p.266)
1801	"An Act to establish the District of Bristol, and to annex the towns of Berwick to the District of Portsmouth," <i>Statutes at Large</i> , Vol. II, 6 <sup>th</sup> Cong., Sess. 2, Chap. VII, p. 102, Feb. 25, 1801	Sect. 3 reads in summary: from next March 31, Kittery and Berwick in Massachusetts shall be annexed to Portsmouth in New Hampshire as ports of delivery only; any ship may make entry at its option with Collector of District of York.





DATE	DOCUMENT	NOTE
1802	"An Act authorizing the erection of certain lighthouses; and for other purposes." <i>Statutes at Large</i> , Vol. II, 7 <sup>th</sup> Cong., Sess. I, Chap. XX., p. 151, April 6, 1802	Congress will provide funds for rebuilding the lighthouse on the eastern end of New Castle Island, at the entrance of the Piscataqua, either on land owned by the United States or on Pollock's Rock. If the lighthouse will be built on Pollock's Rock, the state of New Hampshire will need to turn over the property and jurisdiction of the site to the United States.
1802	Ms. Seavey vs. Brig Trolly ["Polly"], Case File, Box 1, USNH, RG 21	Admiralty case in District of New Hampshire.
1805	Ms. US vs. Winthrop B. Norton, March 1, 1805, Case Files, USDC-NH, RG 21	
1807	Ms. US vs. Micajah Drinkwater, DC228, 1-1807, NE No. 3, May 29, 1807, Case Files, USNH, RG 21	
1807	Ms. US vs. Lord, Nov. 27, 1807, USDC-NH, NE16, DC274, Nov. 27, 1807, Case Files, RG 21	
1809	Ms. US vs. John Follett, Final Record Book, USNH, pp. 345-54, RG 21	
1810	US vs. James Rollins, Case Papers, USDC-NH, DC-132, June 1811 (NE 5), RG 21	
1810	Ms. US vs. James Rollins, DC-118, 12-1810, NE3, Nov. 29, 1810, Case Files, USNH, RG 21	
1811	Ms. US vs. James Rollins and John Rollins, USDC-NH, DC-132, June 1811 NE5, Case Files, April 25, 1811, RG 21	
1811	Ms. US vs. James Rollins, April 25, 1811, USDC-NH, DC-132, June 1811, NE5, April 25, 1811, Case Files, RG 21	
1812	Ms. US vs. Eight Puncheons of Rum, etc.. Final Record Book, USNH, pp. 415-18, RG 21	The Port of Portsmouth is described as located in the Federal District of New Hampshire.
1826	<i>Journal of the US Senate</i> , p. 95, Jan. 16, 1826	Mr. Woodbury presented the petition of sundry inhabitants of Portsmouth and the adjacent seaport towns in New Hampshire, praying that a monument or light may be placed at the eastern entrance of Portsmouth Harbor for the protection of commerce.
1826	<i>Journal of the US House of Representatives</i> , p. 42, Dec. 11, 1826	Resolved: That the Committee on Commerce be instructed to inquire into the expediency of erecting a beacon or light-house on or near the ledge of rocks called the "Whale's Back," at the mouth of Piscataqua River. <i>See Location Reference Map, App. at 21a.</i>



DATE	DOCUMENT	NOTE
1827	"An Act to authorize the building of lighthouses and beacons, and for other purposes," <i>Statutes at Large</i> , Vol. IV, 19 <sup>th</sup> Cong., Sess. 2, Chap. XLVII, p. 229, March 2, 1827	The Sec. of Treasury will build, by contract, a lighthouse at or near the mouth of Portsmouth Harbor in the state of New Hampshire, on a ledge called "Whales Back" or on such other site near to such ledge. <i>See Location Reference Map, App. at 21a.</i>
1827	<i>Dry Dock - Portsmouth, New Hampshire. Memorial of the Citizens of Portsmouth, N.H. Respecting the Construction of a Dry Dock at the Navy Yard at That Place</i> , 19 <sup>th</sup> Cong., 2 <sup>nd</sup> Sess., House Doc. No. 92.	Memorial by Portsmouth residents urging Congress to appropriate funds for the construction of a dry dock at the Navy Yard at Portsmouth, New Hampshire.
1828	<i>Journal of the US House of Representatives</i> , p. 115, Jan. 3, 1828	The House of Representatives requests that the Secretary of War furnish the House with a copy of the report of a survey of the Piscataqua River that was made under the direction of Lieutenant Colonel Anderson.
1828	<i>Journal of the US Senate</i> , p. 71, Jan. 3, 1828	The following motion, submitted by Mr. Woodbury, was considered and agreed to: the Committee on Commerce is instructed to inquire into the expediency of a further appropriation, for building a lighthouse on or near a ledge of rocks, called the Whale's Back, in the Harbor of Portsmouth, New Hampshire. <i>See Location Reference Map, App. at 21a.</i>
1828	<i>Journal of the US Senate</i> , p. 71, March 3, 1828	The following motion, submitted by Mr. Woodbury, was considered and agreed to: the Committee on Commerce will inquire into the expediency of a further appropriation for building a lighthouse on or near a ledge of rocks, called the Whale's Back, in the harbor of Portsmouth, New Hampshire. <i>See Location Reference Map, App. at 21a.</i>
1828	<i>Journal of the US House of Representatives</i> , p. 155, Feb. 10, 1828	With a view to improve navigation, the "Speaker laid before the House the following communications, viz: A letter from the Secretary of War, accompanied by a report of the Chief Engineer, with a report and plan of the survey of Piscataqua river, called for by this House on the 4th inst., which letter and accompanying documents were referred to the Committee on Commerce."
1828	<i>Journal of the US House of Representatives</i> , p. 37, Dec. 8, 1828	Resolved that the Committee on Commerce be instructed to inquire into the expediency of making an additional appropriation for the construction of a light-house upon the rock called "Whale's Back" near the harbor of Portsmouth, in the state of New Hampshire. <i>See Location Reference Map, App. at 21a.</i>
1828	"An Act to authorize the building of lighthouses, and for other purposes," <i>Statutes at Large</i> , IV, 20 <sup>th</sup> Cong., Sess. 1, Chap. LXIX, p. 283, May 23, 1828	\$8,000 is appropriated for building a lighthouse on a ledge of rocks called the Whale's Back in the harbor of Portsmouth in the state of New Hampshire, in addition to the former appropriation for that object. <i>See Location Reference Map, App. at 21a.</i>





DATE	DOCUMENT	NOTE
1828	<i>Journal of the US Senate</i> , p. 45, Dec. 22, 1828	The following motion, submitted by Mr. Woodbury, was considered and agreed to: Resolved that the Committee on Commerce be instructed to inquire into the expediency of making an appropriation to place two buoys in Portsmouth Harbor, one on Kitt's Rock, and the other on a rock in Pepperell's Cove. <i>See Location Reference Map. App. at 2 Ia.</i>
1829	"An Act making appropriations for building lighthouses and beacons, and placing buoys, and for improving harbors and directing surveys," <i>Statutes at Large</i> , Vol. IV, 20 <sup>th</sup> Cong., Sess. 2, Chap. XXV, pp. 345, 346, March 2, 1829	Congress appropriates funds for the following navigation improvements in New Hampshire: (1) New Hampshire: \$60 for making a survey of Cocheco branch of Piscataqua River from Dover to confluence with Piscataqua to ascertain feasibility and cost off removing obstructions to navigation [p. 346] (2) State of New Hampshire: Additional \$10,500 for building a lighthouse on ledge of rocks (Whale's Back) near the harbor of Portsmouth; \$300 for placing two buoys, one on Kitt's Rock, and one on a rock in Pepperell's [sic] Cove in Portsmouth Harbor [p. 345] <i>See Location Reference Map. App. at 2 Ia.</i>
1830	<i>Journal of the US Senate</i> , p. 126, Feb. 8, 1830	Mr. Holmes presents a memorial of the citizens of Kittery, York, and Eliot, in the state of Maine, praying that the "Navy Yard in the harbor of Portsmouth, in New Hampshire, may not be abolished." Holmes was a Maine Congressman. Describes Eliot as located in "the State of Maine" and the Navy Yard as located in the "harbor Portsmouth, in New Hampshire."
1830	<i>Journal of the US House of Representatives</i> , p. 259, Feb. 8, 1830	Mr. Anderson (a Maine Congressman) presents a memorial of inhabitants of Kittery, York, and Eliot, in the state of Maine, remonstrating against a discontinuance and abandonment of the Navy Yard at Portsmouth, in the state of New Hampshire, as proposed in a report made by the Board of Navy Commissioners to the Secretary of the Navy.
1836	<i>Journal of the US House of Representatives</i> , p. 286, Feb. 3, 1826	"On motion of Mr. Cushman, by leave, Resolved, That the Committee on Naval Affairs be instructed to inquire into the expediency of an appropriation for the purpose of erecting one or more wharves at the navy yard at Portsmouth, in New Hampshire."
1836	<i>Journal of the US House of Representatives</i> , p. 645, April 7, 1836	"A motion was made by Mr. Lane, that the said bill be further amended by striking out these words, viz: "For improvement and necessary repairs of the navy yard at Portsmouth. New Hampshire, sixty-seven thousand dollars."
1836	"An Act making appropriations for the improvement of certain harbors, therein mentioned, for the year one thousand eight hundred and thirty-six, and for other purposes," <i>Statutes at Large</i> , Vol. V, 24 <sup>th</sup> Cong., Sess. 1, Chap. CCCLXIII, p. 129, July 4, 1836	The margin notes state, "N. Hampshire: Deepening Piscataqua River." The body of the text stipulates the sum, \$5,000, that Congress appropriates for deepening the channel of the Cocheco branch of the Piscataqua River, leading to Dover harbor.



DATE	DOCUMENT	NOTE
1836	<i>Journal of the US House of Representatives</i> , p. 355, Feb. 15, 1836	"Mr. Cushman presented a petition of inhabitants of Portsmouth, in the State of New Hampshire, praying for an appropriation for the erection of a stone pier on Seaward's rock, so called, in Piscataqua river, near the east end of Rail-way wharf."
1836	"Naval Appropriations. Speech of Hon. George Evans of Maine in the House of Representatives, March 15, 1836," <i>Appendix to the Congressional Globe, for the First Session, Twenty-Fourth Congress: Containing Speeches and Important State Papers</i> (Washington: Printed at the Globe Office for the Editors, 1836), pp. 548-53	Congressman Evans of Maine describes the Portsmouth Navy Yard as located in New Hampshire.
1836	"Naval Appropriation Bill – Maritime Defenses. Speech of Hon. J. Garland, of Virginia, in the House of Representatives, April 1, 1836," <i>Appendix to the Congressional Globe, for the First Session, Twenty-Fourth Congress: Containing Speeches and Important State Papers</i> (Washington: Printed at the Globe Office for the Editors, 1836), pp. 240-248	Congressman Garland of Virginia describes of the Portsmouth Navy Yard as located in Portsmouth, New Hampshire.
1836	"Maritime Defenses. Speech of Hon. Leonard Jarvis, of Maine, in the House of Representatives, April 4, 1836," <i>Appendix to the Congressional Globe, for the First Session, Twenty-Fourth Congress: Containing Speeches and Important State Papers</i> (Washington: Printed at the Globe Office for the Editors, 1836), pp. 265-71	Congressman Jarvis of Maine describes the Portsmouth Navy Yard as located in Portsmouth, New Hampshire.
1836	"Portsmouth Navy-Yard. Remarks of Hon. F.O.J. Smith, of Maine, in the House of Representatives, February 10, 1836," <i>Appendix to the Congressional Globe, for the First Session, Twenty-Fourth Congress: Containing Speeches and Important State Papers</i> (Washington: Printed at the Globe Office for the Editors, 1836), pp. 81-82	Congressman Smith of Maine states his support for the continuance of the Portsmouth Navy Yard, which he locates in Portsmouth, New Hampshire.
1837	<i>Journal of the US Senate</i> , p. 327, March 3, 1837	A petition is presented from citizens of Exeter, N. H. for the improvement of Piscataqua River.





DATE	DOCUMENT	NOTE
1837	"An Act making appropriations for building light-houses, light-boats, beacon-lights, buoys, and dolphins, for the year one thousand eight hundred and thirty-six," <i>Statutes at Large</i> , Vol. V, 24 <sup>th</sup> Cong., Sess. 2, Chap. XL, p. 182, March 3, 1837	Congress appropriates the followings sums for aids to navigation in the state of New Hampshire: (1) \$3,000 for erection of a pier east of Whale's Back lighthouse. (2) \$500 for placing buoys at the entrance of Spruce Creek, on the eastern edge of "Sunken Rocks" and on the east side of Amazeen Island. (3) \$400 for placing buoys on "Cod Rock" near Fort Point. <i>See Location Reference Map, App. at 20a-21a.</i>
1837	"An Act to provide for certain harbors, and for the removal of obstructions in and at the mouths of certain rivers, and for other purposes, during the year one thousand eight hundred and thirty-seven," <i>Statutes at Large</i> , Vol. V, 24 <sup>th</sup> Cong., Sess. 2, Chap. XLIV, p. 187, March 3, 1837	Congress appropriates \$5,000 for completing the channel of the Cocheco River.
1837	<i>Journal of the US House of Representatives</i> , p. 346, Feb. 6, 1837	Mr. Fairfield presents a petition of Peter Dickson, of Eliot, in the state of Maine, praying remuneration for a quantity of stone-wall taken by the crew of the United States frigate Congress, for the construction of a battery for the protection of the frigate during the last war with Great Britain, and for other damages to his property in the construction of the battery. Mr. Cushman presents a petition of John Jenkins, of Kittery, in the state of Maine, praying compensation for injury sustained in consequence of vessels, stationed at the Portsmouth Navy Yard, anchoring near his premises.
1837	<i>Journal of the US House of Representatives</i> , p. 307, Jan. 30, 1837	Mr. Cushman presents the petition of inhabitants of the Village of Exeter, in the state of New Hampshire, praying an appropriation for the improvement of the Exeter branch of the Piscataqua river "in said State."
1837	<i>Whale's Back Light-House. Sundry Documents from the Treasury Department, Relating to the Light-house on Whale's Back, in the State of New Hampshire. December 11, 1837</i> , House Doc. No. 19, 25 <sup>th</sup> Cong., 2 <sup>nd</sup> Sess.	New Hampshire citizens request that repairs be made to Whale's Back lighthouse. <i>See Location Reference Map, App. at 21a.</i>
1838	"An act making appropriations for building light-houses, light-boats, beacon-lights, buoys, and making surveys, for the year one thousand eight hundred and thirty eight," <i>Statutes at Large</i> , Vol. V, 25 <sup>th</sup> Cong., Sess. 2, Chap. CLXXX, p. 289, July 7, 1838	Congress appropriates to the state of New Hampshire \$17,000 for the erection of a pier on the east side of Whale's Back lighthouse to protect "the same in addition to the appropriation made for the same." <i>See Location Reference Map, App. at 21a.</i>



DATE	DOCUMENT	NOTE
1838	Ms. John Hodgkins vs. S[team] V[essel] New England, Final Record Book, Case Files, USNH, pp. 201+, RG 21, National Archives Northeastern Headquarters, Waltham, MA	Case in Admiralty: The vessel was brought into Port of Portsmouth after grounding and capsizing south of the Isles of Shoals on Cedar Ledge. It was towed into Portsmouth Harbor, anchored at Pepperrell's Cove, then towed through the "Narrows" to the Navy Yard wharf between Dennett's and Seavey's islands. The boat was put upright at the Navy Yard wharf, then towed to Portsmouth.
1846	<i>Journal of the US House of Representatives</i> , p. 194, Jan. 5, 1846	Mr. Scammon presents a memorial from the citizens of the states of Maine and New Hampshire, "praying for an appropriation to construct a dry dock at the navy yard, near Portsmouth, New Hampshire."
1846	<i>Journal of the US House of Representatives</i> , p. 57, Dec. 16, 1846	Mr. Norris presents a memorial of citizens of the state of New Hampshire, praying for the construction of a dry dock at the navy yard in Portsmouth Harbor, in that state.
1847	"An Act authorizing the erection of certain lighthouses, and for other purposes," <i>Statutes at Large</i> , Vol. IX, 29 <sup>th</sup> Cong., Sess. 2, Chap. LII, p. 175, March 3, 1847	Congress appropriates "In New Hampshire" \$25,000 to rebuild the lighthouse "on a rock called the Whale's Back." See <i>Location Reference Map, App. at 21a</i> .
1847	<i>Journal of the US Senate</i> , p. 98, Jan. 14, 1847	The Senate resolves that the Secretary of War be directed to furnish, on a reduced scale, a copy of the late Corps. of Army Engineers survey of the harbor of Portsmouth, New Hampshire to consider ways to improve harbor navigation together with a copy of the accompanying report.
1850	<i>Journal of the US House of Representatives</i> , p. 629, March 4, 1850	Mr. Tuck presented the petition of "citizens of Portsmouth, in the State of New Hampshire, praying for an appropriation to construct buoys and a sea-wall near the entrance of Portsmouth harbor" to improve navigation.
1850	<i>Journal of the US House of Representatives</i> , p. 763, April 9, 1850	The House refers to the Committee on Commerce the petition that Mr. Gerry submitted from "citizens of the States of Maine and New Hampshire, praying for the erection of a buoy and beacon in the Piscataqua river, near Log [Logy] Ledge . . ." to improve navigation. See <i>Location Reference Map, App. at 21a</i> .
1850	<i>Journal of the US House of Representatives</i> , p. 654, March 11, 1850	Mr. Tuck submits the petition of "citizens of Portsmouth, in the State of New Hampshire, praying for an appropriation to construct buoys and a sea-wall near the entrance of Portsmouth Harbor."
1850	"An Act making appropriations for light-houses, light-boats, buoys, &c, and providing for the erection and establishment of the same, and for other purposes," <i>Statutes at Large</i> , Vol. IX, 31 <sup>st</sup> Cong., Sess. 1, Chap. LXXVII, p. 500, Sept. 28, 1850	Congress appropriates to New Hampshire the following sums: (1) \$2,500 for a beacon and buoys at the mouth of Little Harbor, near Portsmouth (2) \$500 for a beacon on Logy's Ledge in Piscataqua River. See <i>Location Reference Map, App. at 21a</i> .
1851	<i>Journal of the US House of Representatives</i> , p. 81, Dec. 1, 1851	Mr. Tuck submits the petition of "citizens of the State of New Hampshire, praying for the erection of buoys and beacons in the harbor of Portsmouth, in Said State."





DATE	DOCUMENT	NOTE
1851	<i>Journal of the US House of Representatives</i> , p. 81, Dec. 11, 1851	Mr. Tuck again submits the petition of "citizens of the State of New Hampshire, praying for the erection of buoys and beacons in the harbor of Portsmouth, in Said State."
1852	"An Act making appropriations for light-houses, light-boats, buoys, &c, and providing for the erection and establishment of the same, and for other purposes," <i>Statutes at Large</i> , Vol. X, 32 <sup>nd</sup> Cong., Sess. 1, Chap. CXII, p. 113, Aug. 31, 1852	Appropriated for New Hampshire: \$800 for a beacon on "Wiley's Ledge and a spar-buoy on Half-Way Rock, in the harbor of Portsmouth." <i>See Location Reference Map, App. at 20a.</i>
1854	<i>Journal of the US House of Representatives</i> , p. 323, Feb. 6, 1854	Mr. McDonald puts forward the petition of the master-mechanics at the Kittery navy yard, in the state of New Hampshire, for increase of compensation.
1870	"An act making appropriation for sundry civil expenses of the Government for the year ending June thirty, eighteen hundred and seventy-one, and for other purposes," <i>Statutes at Large</i> , Vol. XVI, 41 <sup>st</sup> Cong., Sess. 2, Chap. CCXCII, p. 297, July 15, 1870	Congress grants \$75,000 for "rebuilding lighthouse and pier at Whale's Back Lighthouse "off Portsmouth, New Hampshire" to improve navigation. <i>See Location Reference Map, App. at 21a.</i>
1872	<i>Journal of the US House of Representatives</i> , p. 110, Dec. 20, 1872	Mr. Ellery Albee Hibbard, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to, "viz: Resolved, That the Committee on Commerce be instructed to inquire into the expediency of constructing a sea wall or breakwater between Gerrish's Island and Wood Island, in Portsmouth Harbor, New Hampshire, and report by bill or otherwise." <i>See Location Reference Map, App. at 21a.</i>
1875	"List of Places on the Coasts of the United States Where Vessels Have Stranded, &c.," <i>Report of the Secretary of the Treasury on the State of the Finances for the Year 1875</i> (Washington: Government Printing Office, 1875), p. 109.	The Treasury Department lists a vessel as stranded at "Fishing Island, N.H." <i>See Location Reference Map, App. at 21a.</i>
1877	"An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and seventy-eight," <i>Statutes at Large</i> , Vol. XIX, 44 <sup>th</sup> Cong., Sess. 2, Chap. 105, p. 352, March 3, 1877	Congress grants \$5,000 for steam fog signals on Whale's Back Island in the harbor of Portsmouth, New Hampshire to aid navigation. <i>See Location Reference Map, App. at 21a.</i>



DATE	DOCUMENT	NOTE
1878	"Report of the Chief of Engineers," <i>Annual Report of the Secretary of War for the Year 1879</i> . In Four Volumes (Washington: Gov't Printing Office, 1879), Vol. II, Part I, pp. 282-84.	The Corps of Army Engineers reports that its survey of "Portsmouth Harbor, New Hampshire" reveals that the tasks listed below would improve navigation: (1) Close channel between Great Island and Goat Island to stop the strong current in the area (2) Remove from the channel part of "Gangway Rock" (3) Remove part of the ledge at SW point of Badger's Island <i>See Location Reference Map, App. at 20a.</i>
1878	"An Act making appropriations for the construction, repair, preservation, and completion of certain public works on rivers and harbors, and for other purposes," <i>Statutes at Large</i> , Vol. XX, 45 <sup>th</sup> Cong., Sess. 2, Chap. 264, pp. 158, 160, June 18, 1878	Congress appropriates the following funds for aids to navigation in New Hampshire: (1) \$6,000 for improving the Conheco River, New Hampshire [p. 158] (2) At his discretion, the Sec. of War will survey and give cost to improve several locations, including Portsmouth Harbor, New Hampshire [p. 160]
1880	"An Act making appropriations for the construction, repair, completion, and preservation of certain works on rivers and harbors, and for other purposes," <i>Statutes at Large</i> , Vol. XXI, 46 <sup>th</sup> Cong., Sess. 2, Chap. 211, p. 180, June 14, 1880	Congress grants the followings sums for aids to navigation: \$25,000 for continuing the improvement of harbor at Portsmouth, New Hampshire.
1880	"Report of the Chief of Engineers, U.S. Army," <i>Annual Report of the Secretary of War for the Year 1880</i> . In Four Volumes (Washington: Gov't Printing Office, 1880), Vol. II, Part I, pp. 68, 340-42	The Corps of Army Engineers submits a progress report concerning improvements for navigation in Portsmouth Harbor, New Hampshire, money for which Congress had appropriated by the end of 1879: (1) The building of a breakwater between Great and Goat islands to prevent strong current at flood tide from passing through the channel and wrecking boats on Goat Island ledge; (2) The removal Gangway Rock to 20' depth at mean low water; and (3) The removal of part of ledge at SW point of Badger's Island, to prevent vessels wrecking on ledge at ebb tide. The money will be applied to complete further the breakwater partially built and to start partial excavation of Gangway Rock. <i>See Location Reference Map, App. at 20a.</i>
1880	Ms. Matthew Murphy <i>et als</i> vs. the Mary S. Hontvent, Final Record Book, Vol. 4, Dec. Term 1880, USNH, RG-21	The US District Court of New Hampshire takes up the salvage case of a vessel that was towed from three miles east of Whale's Back lighthouse into "Portsmouth Harbor." <i>See Location Reference Map, App. at 21a.</i>



DATE	DOCUMENT	NOTE
1881	"An Act making appropriations for the construction, completion, repair, and preservation of certain works on rivers and harbors, and for other purposes," <i>Statutes at Large</i> , Vol. XXI, 46 <sup>th</sup> Cong., Sess. 3, Chap. 136, p. 469, March 3, 1881	Congress grants \$20,000 for improving harbor at Portsmouth, New Hampshire.
1881	"Report of the Chief of Engineers, U.S. Army," <i>Annual Report of the Secretary of War for the Year 1881</i> . In Four Volumes (Washington: Gov't Printing Office, 1882), Vol. II, Part 1, pp. 71-72	The Corps. of Army Engineers makes a progress report on a navigation improvement project for Portsmouth Harbor, New Hampshire, for which money was appropriated in 1879.
1882	"An Act making appropriations for the construction, repair, and preservation of certain works on rivers and harbors, and for other purposes," <i>Statutes at Large</i> , Vol. XXII, 47 <sup>th</sup> Cong., Sess. 1, Chap. 375, p. 191, Aug. 2, 1882	Congress appropriates the following sums for navigation improvement: (1) \$17,000 for improving Portsmouth Harbor, New Hampshire [p. 191] (2) \$28,000 for completing the improvement of the Cocheco River, New Hampshire [p. 206]
1882	"An Act making appropriations for the construction, repair, and preservation of certain works on rivers and harbors, and for other purposes," <i>Statutes at Large</i> , Vol. XXII, 47 <sup>th</sup> Cong., Sess. 1, Chap. 375, p. 212, Aug. 2, 1882	The President directs the Sec. of War, at the Sec. of War's discretion, to examine and/or survey and estimate the cost of improving several projects, including the extension and completion of the breakwater between Goat Island and New Castle, near the third, at Portsmouth Harbor, New Hampshire, and the increase of the depth and flow of water and improvement of navigation of the Piscataqua River and its tributaries.
1882	"Report of the Chief of Engineers, U.S. Army," <i>Annual Report of the Secretary of War for the Year 1882</i> . In Four Volumes (Washington: Gov't Printing Office, 1882), Vol. II, Part 1, pp. 505-07.	Review of work projected and done in Portsmouth Harbor, New Hampshire. Proposal to remove Gangway Rock because it is a serious navigational obstacle to US Navy vessels. The River and Harbor Act of March 3, 1881 provided money for partial removal of ledge at SW part of Badger's Island. The Portsmouth Marine Society, Portsmouth Board of Trade, and other Portsmouth citizens support the proposed improvements. <i>See Location Reference Map, App. at 20a.</i>
1883	"Report of the Chief of Engineers, U.S. Army," in <i>Report of the Secretary of War; Being Part of the Message and Documents Communicated to the Two Houses of Congress at the Beginning of the First Session of the Forty-Eighth Congress</i> . In Four Volumes (Washington: Gov't Printing Office, 1883), Vol. II, Part 1, pp. 430-32	Congress appropriates funds for the projects listed below to improve the navigation of Portsmouth Harbor, "New Hampshire": (1) Construction of breakwater between Great and Goat islands (2) Breakup and remove Gangway Rock (3) Remove part of Ledge at SW point of Badger's Island <i>See Location Reference Map, App. at 20a.</i>



DATE	DOCUMENT	NOTE
1884	"An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," <i>Statutes at Large</i> , Vol. XXIII, Cong., Sess. 1, Chap. 229, pp. 133, 137, 152, July 5, 1884	Congress acts on the following matters to improve navigation in New Hampshire: (1) \$28,000 appropriated for completing improvement to the Cocheco River [p. 137]; (2) The President directs the Sec. of War, at the Sec. of War's discretion, to examine and/or survey and estimate the cost of several projects, including: [a] improving the harbor at Portsmouth from the sea to the "wharf" [sic] and [b] improving Little Harbor at Portsmouth as a Harbor of Refuge [p. 152]; and (3) \$20,000 for continuing improvements to the harbor at Portsmouth, New Hampshire [p. 133].
1884	"Report of the Chief of Engineers, U.S. Army," in <i>Report of the Secretary of War: Being Part of the Message and Documents Communicated to the Two Houses of Congress at the Beginning of the Second Session of the Forty-Eighth Congress</i> . In Four Volumes (Washington: Gov't Printing Office, 1884), Vol. II, Part 1, pp. 71-73, 474-75	Review of navigation improvement work done in Portsmouth Harbor, New Hampshire under the 1879 appropriation. Included are: (1) a list of all appropriations (1879-1884), (2) comments on work done during 1884 at Gangway Rock and Badger's Island [pp. 71-73], (3) a preliminary examination for extending and completing the breakwater near the 3 <sup>rd</sup> bridge in Portsmouth Harbor, New Hampshire, connecting Goat and Great islands, (4) and an explanation of the need to extend the breakwater that was completed in 1880 [pp. 474-75]. See <i>Location Reference Map, App. at 20a</i> .
1886	"An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," <i>Statutes at Large</i> , Vol. XXIV, 49 <sup>th</sup> Cong., Sess. 1, Chap. 929, pp. 310, 317, 333, Aug. 5, 1886	Congress appropriates the following sums: (1) \$15,000 for continuing improvements to the harbor at Portsmouth, New Hampshire [p. 310]; (2) \$10,000 for improvements to Little Harbor, New Hampshire [p. 317]; and (3) \$10,000 for continuing improvements to Cocheco River, New Hampshire [p. 333]
1886	Mss. Copies of Wreck Reports, Gloucester 1886-1888, p. 16.	Schooner collides with US Steamer Fish Hawk in "Portsmouth, Lower Harbor."
1886	"Report of the Chief of Engineers, U.S. Army," <i>Annual Report of the Secretary of War for the Year 1886</i> . In Four Volumes (Washington: Gov't Printing Office, 1886), Vol. II, Part 1, pp. 58-59	Concerning navigational aids for Portsmouth Harbor, New Hampshire, including the removal of part of Gangway Rock and to removal of a part of the ledge at the SW point of Badger's Island. See <i>Location Reference Map, App. at 20a</i> .
1886	"Report of the Chief of Engineers, U.S. Army," <i>Annual Report of the Secretary of War for the Year 1887</i> . In Four Volumes (Washington: Gov't Printing Office, 1887), Vol. II, Part 1, pp. 463-68	Progress report on navigational aids for the "Improvement of Portsmouth Harbor, New Hampshire." The report includes commercial statistics from 1887 for the harbor that were supplied by the Port of Portsmouth Collector of Customs and the Portsmouth Board of Trade.





DATE	DOCUMENT	NOTE
1888	"An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," <i>Statutes at Large</i> , Vol. XXV, 50 <sup>th</sup> Cong., Sess. 1, Chap. 860, pp. 400, 408, 429, Aug. 11, 1888	<p>Congress appropriates the following sums for navigation aid:</p> <ul style="list-style-type: none"> <li>(1) \$15,000 to continue improvements to the harbor at Portsmouth, New Hampshire [p. 400]</li> <li>(2) \$20,000 to continue improvements to an enlarged plan of Little Harbor, New Hampshire [p. 400]</li> <li>(3) \$9,000 for completing improvements to Cocheco River, New Hampshire [p. 408]</li> </ul> <p>The President directs the Sec. of War, at the Sec. of War's discretion, to examine and/or survey and estimate the cost of improving several projects, including, for New Hampshire, the Cocheco River from Dover to its mouth [p. 429].</p>
1889	"Report of the Chief of Engineers, U.S. Army," in <i>Report of the Secretary of War: Being Part of the Message and Documents Communicated to the Two Houses of Congress at the Beginning of the First Session of the Fifty-First Congress</i> . In Four Volumes (Washington: Gov't Printing Office, 1889), Vol. II in 4 Parts, Part 1, pp. 538-39	Progress report on "Improvement of Portsmouth Harbor, New Hampshire" to aid navigation. The remarks include costs and dates of work done so far and presents the Commercial statistics supplied by Portsmouth Board of Trade and the US Collector of Customs for the Port of Portsmouth.
1890	"An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," <i>Statutes at Large</i> , Vol. XXVI, 51st Cong., Sess. 1, Chap. 907, pp. 427, 436, Sept. 19, 1890	<p>Congress appropriates the following sums for navigation improvement:</p> <ul style="list-style-type: none"> <li>(1) \$13,000 to complete improvement of Portsmouth Harbor, New Hampshire, by removing Pier Rock to depth of 12' mean low water mark [p. 427]</li> <li>(2) \$40,000 for completing Little Harbor improvement [p. 427]</li> <li>(1) (3) \$25,000 for improving Cocheco River, New Hampshire [p. 436]</li> </ul>
1890	"An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," <i>Statutes at Large</i> , Vol. XXVI, 51st Cong., Sess. 1, Chap. 907, p. 454, Sept. 19, 1890	Sect. 8 provides that all wrecks of vessels and other obstructions to any port, roadstead, harbor, or navigable river left for two months will be removed by Secretary of War.
1890	"An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," <i>Statutes at Large</i> , Vol. XXVI, 51st Cong., Sess. 1, Chap. 907, p. 460, Sept. 19, 1890	The President directs the Sec. of War, at the Sec. of War's discretion, to examine and/or survey and estimate the cost of improving several navigation aid projects, including, for Maine, Pepperrell's Cove that forms the eastern boundary of Portsmouth Lower Harbor. <i>See Location Reference Map, App. at 21a.</i>



DATE	DOCUMENT	NOTE
1890	"Report of the Chief of Engineers, U.S. Army," <i>Annual Report of the Secretary of War for the Year 1890</i> . In Four Volumes (Washington: Gov't Printing Office, 1890), Vol. II in 4 Parts, Part I, p. 24	Report on navigational improvement work at "Harbor at Portsmouth, New Hampshire" Badger's Island ledge project remains uncompleted. See <i>Location Reference Map, App. at 20a</i> .
1899	[ <i>Examination of Pull-and-Be-Damned Point, Portsmouth, N.H.</i> ], <i>Letter from the Secretary of War, Dec. 4, 1899</i> , 56 <sup>th</sup> Cong., 1 <sup>st</sup> Sess., House Doc. No. 39	The report of the Chief of Engineers' preliminary examination of Portsmouth Harbor, New Hampshire to improve navigation declares that the harbor is not worthy of improvement at this time.
1899	<i>Annual Reports of the War Department for the Fiscal Year Ended June 30, 1900. Report of the Chief of Engineers</i> (Washington: Gov't Printing Office, 1900), Part I, p. 77, 56 <sup>th</sup> Cong., 2 <sup>nd</sup> Sess., House Doc. No. 2.	The Corps of Army Engineers presents a preliminary examination of Pull-and-Be-Damned Point, Portsmouth Harbor, New Hampshire with a view to improve navigation. See <i>Location Reference Map, App. at 20a</i> .
1899	"Progress Sketch Showing Triangulation, Topography and Hydrography Portsmouth Harbor New Hampshire June 30, 1898," <i>Report of the Superintendent of the Coast and Geodetic Survey Showing the Progress of the Work from July 1, 1898 to June 30, 1899</i> (Washington: Gov't Printing Office, 1900), Serial Set Vol. No. 3884	
1901	<i>Letter from the Secretary of the Navy relating to the Removal of Henderson's Point at Portsmouth, N.H.</i> , 57 <sup>th</sup> Cong., 1 <sup>st</sup> Sess., House Doc. 243 (1901)	The Secretary of the Navy transmits a copy of the state of bids for the removal of Henderson's Point, near the navy yard, Portsmouth, N.H.
1901	<i>Memorial from the Legislature of New Hampshire Urging an Appropriation for the removal of Henderson's Point in Portsmouth Harbor</i> , 56 <sup>th</sup> Cong., 2 <sup>nd</sup> Sess., Senate Doc. No. 137, Feb. 5, 1901	Report notes the importance of the Yard to southern New Hampshire and the Navy.
1902	"An Act making appropriations for the Naval Service for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes," <i>Statutes at Large</i> , Vol. XXII, Pt. 1, 57 <sup>th</sup> Cong., Sess. 1, Chap. 1368, p. 672, July 1, 1902	Appropriation to remove "Henderson's Point near Navy Yard, Portsmouth, New Hampshire," in accordance with the project recommended in House Doc. No. 243, 57 <sup>th</sup> Cong., Sess. 1. See <i>Location Reference Map, App. at 20a</i> .



DATE	DOCUMENT	NOTE
1902	<i>Letter of the Secretary of the Navy, Jan. 11, 1902, 57<sup>th</sup> Cong., 1<sup>st</sup> Sess., House Doc. No. 243</i>	The Secretary of the Navy discusses the recent Naval appropriation act for improving the navigation of Portsmouth Harbor, New Hampshire by removing part of Henderson's Point on Seavey's Island, New Hampshire.
1907	"An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," <i>Statutes at Large</i> , Vol. XXXIV, Pt. 1, 59 <sup>th</sup> Cong., Sess. 2, Chap. 2509, p. 1113, 1115, March 2, 1907	To improve navigation, the President directs the Sec. of War, at the Sec. of War's discretion, to examine and/or survey and estimate the cost of improving several projects, including: (1) In Maine: Pepperrell's Cove, with a view to its deepening and the removal of a ledge [p. 1113] See <i>Location Reference Map, App. at 21a</i> . (2) In New Hampshire: Isles of Shoals, with a view to constructing a breakwater [p. 1115]
1909	"An Act to provide for the repair, maintenance, and preservation of public works on rivers and harbors, and for other purposes," <i>Statutes at Large</i> , Vol. XXXV, Pt. 1, 60 <sup>th</sup> Cong., Sess. 2, Chap. 264, p. 828, March 3, 1909	The President directs the Sec. of War, at the Sec. of War's discretion, to examine and/or survey and estimate the cost of several navigation improvement projects, including some for Portsmouth Harbor, with a view to the construction of a dam across the Piscataqua River, New Hampshire.
1911	"An Act to authorize the City of Portsmouth, New Hampshire, to construct a bridge across the Piscataqua River," <i>Statutes at Large</i> , Vol. XXXVI, Pt. 1, 61 <sup>st</sup> Cong., Sess. 3, Chap. 283, p. 1362, March 3, 1911	Congress states that Portsmouth may construct, operate, and maintain a bridge and approaches across the Piscataqua River at a point suitable to the interests of navigation, "at or near, Portsmouth, in the County of Rockingham, in the State of New Hampshire," in accordance with "An Act to regulate the construction of bridges over navigable waters, March 23, 1906."
1912	Mss. Copies of Wreck Reports, Rockland, Maine, 1903-1912, p. 108, RG-26, US Coast Guard	A schooner is stranded at "Sister's Rock, Portsmouth, NH." See <i>Location Reference Map, App. at 21a</i> .
1915	"An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," <i>Statutes at Large</i> , Vol. XXXVIII, Pt. 1, 63 <sup>rd</sup> Cong., Sess. 3, Chap. 142, p. 1055, March 4, 1915	The President directs the Sec. of War, at the Sec. of War's discretion, to examine and/or survey and estimate the cost of several projects for improving Portsmouth Harbor, New Hampshire.
1916	Mss. Copies of Wreck Reports, Portsmouth, New Hampshire, 1910-1940, p. 14, RG-36 [26], US Coast Guard	A schooner's "compass attracted 1 point" at "Western Sisterledge, Portsmouth." See <i>Location Reference Map, App. at 21a</i> .
1916	<i>Portsmouth Harbor, N.H. Letter from the Secretary of War, Transmitting with a Letter from the Chief of Engineers, Report on Preliminary Examination of Portsmouth Harbor, N.H., April 10, 1916, 64<sup>th</sup> Cong., Sess. 1, House Doc. No. 1010.</i>	Report on a "Preliminary examination of Portsmouth Harbor, New Hampshire" regarding navigational aids. See <i>Report on Preliminary Examination</i> and map, App. at 23a-37a.



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1920	Mss. Copies of Wreck Reports, Portsmouth, New Hampshire, 1910-1940, p. 19, RG-36 [26], US Coast Guard	A sailing ship suffers a "broken foremast" at the locality "U.S. Navy Yard Portsmouth."
1930	[Permits Issued to Do Work in New England Rivers. Portsmouth Harbor, 1922-1943], Microfilm Reel No. 323	The Corps of Army Engineers grants permission to build and maintain an overhead electric line 2 and 8/10 miles above B&M RR bridge at Portsmouth, New Hampshire from Portsmouth and the "Maine end will be in the Township of Eliot."
1934	<i>War Department, Corps of Engineers, U.S. Army, Port Series No. 24, The Ports of Northern New England Prepared by The Board of Engineers for Rivers and Harbors War Department</i> (Washington: Gov't Printing Office, 1934)	The Corps of Army Engineers report for the Port of Portsmouth, New Hampshire includes tides, currents, weather, anchorages, bridges, terminal improvements, ownership of waterfront, federal services and regulations, port administration, and the US and local interests in harbor and channel improvements.
1941	<i>War Department, Corps of Engineers, U.S. Army. Port and Terminal Facilities at the Ports of Northern New England. Prepared by the Board of Engineers for Rivers and Harbors War Department</i> (Washington: Gov't Printing Office, 1941), pp. 43ff	The Corps of Army Engineers report for the Port of Portsmouth, New Hampshire includes tides, currents, weather, anchorages, bridges, US and local interest in harbor and channel improvements, terminal improvements, ownership of waterfront, federal services and regulations, and port administration.
1945	Julius Augustus Furer, <i>Administration of the Navy Department in World War II</i> (Washington: N.P., 1959)	Navy General Order 223 (Sept. 14, 1945) states that the reorganization of the Navy creates the "U.S. Navy Shipyard" for Portsmouth (replaces "Portsmouth Navy Yard") and places it under the Bureau of Ships, Washington; all aspects of each Naval shipyard establishments will be grouped together as "U.S. Naval Base"; Portsmouth shipyard is designated as "U.S. Naval Base, Portsmouth, New Hampshire."
1948	Ms. and Typescript 1949 project file, NAW, box 67, Portsmouth Harbor and Piscataqua River project, Corps of Army Engineers	The typescript reviews all Corps of Army Engineers reports, 1878-1909, on Portsmouth Harbor, New Hampshire and the Piscataqua River, New Hampshire (letter from US House Public Works Chairman to "OCE" [Office of Chief of Engineers]). The report describes Portsmouth Harbor, New Hampshire geographically and as part of a river system. It reviews Portsmouth Harbor improvement studies since 1873, including the removal of a "portion" of Gangway Rock, SW point of Badger's Island, and Boiling Rock. See <i>Location Reference Map, App. at 20a</i> .
1949	Ms. and Typescript 1950s project file, Box 67, Portsmouth Harbor and Piscataqua River project, Corps of Army Engineers	The typescript lists people present at a public hearing on a Piscataqua River navigation improvement project. The list is predominantly comprised of New Hampshire residents. The hearing followed a meeting of 12-22-1948 at Portsmouth, conducted by New Hampshire Congressman Merrow and Seacoast Regional Development Assoc., Portsmouth Chamber of Commerce, City officials, and business interests for improving navigation of Piscataqua River.





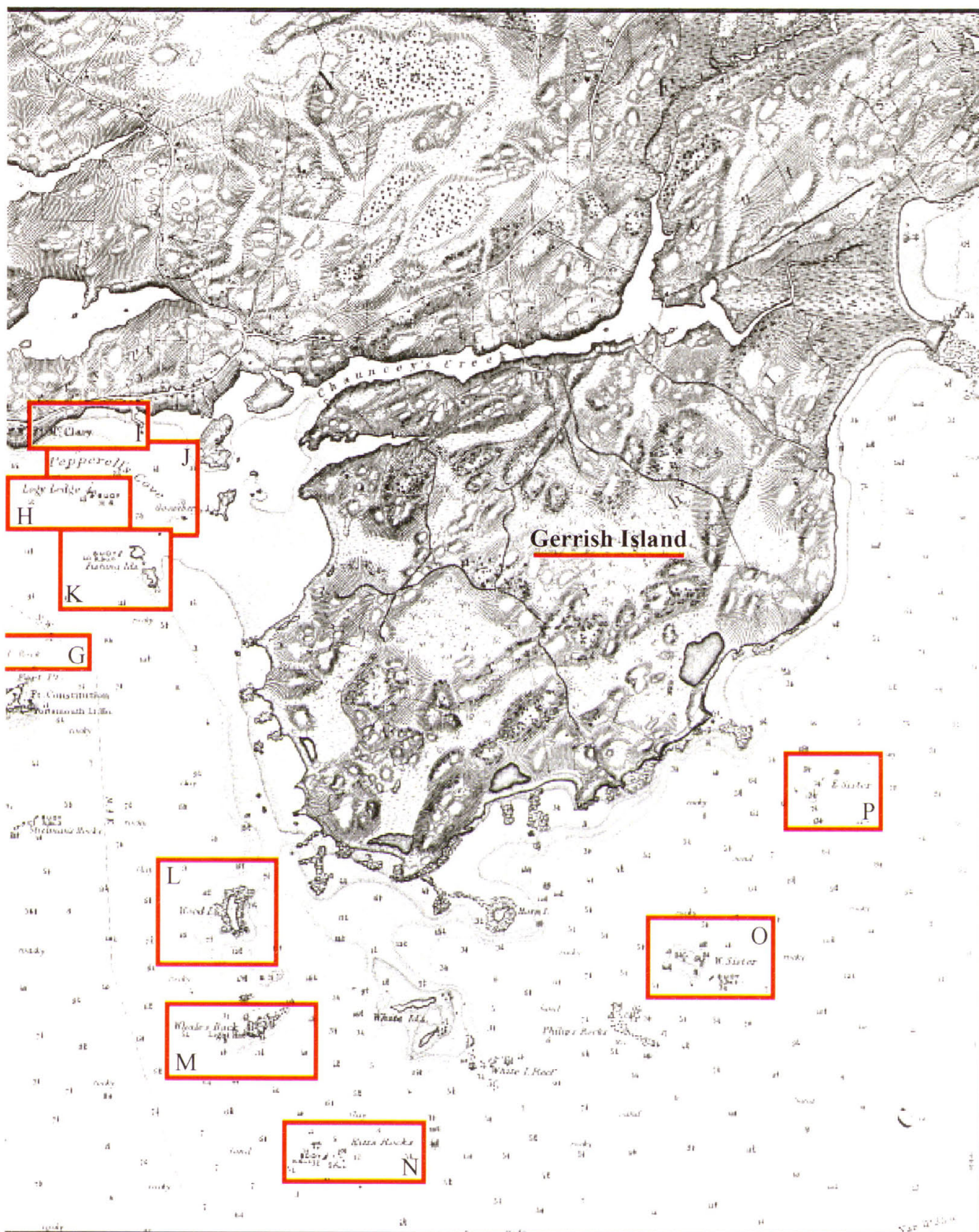
DATE	DOCUMENT	NOTE
1950	Ms. and Typescript 1949 project file, Box 67, Portsmouth Harbor and Piscataqua River project, Corps of Army Engineers	The typescript provides a cost estimate for navigation aids for Portsmouth Harbor, New Hampshire, and places Wood Island, Badger's Island, Spinney Creek, Mast Cove Rock and Gangway Rock lighted buoys, and Willey Ledge buoy, Seward Rock buoy, and Boiling rock light in "Portsmouth Harbor, N.H." <i>See Location Reference Map, App. at 20a-22a.</i>
1960	"Stenographic Record. U.S. Army Engineer Division - New England Corps of Engineers. Minutes of Public Hearing on Navigation Improvements in Portsmouth Harbor and Piscataqua River, Maine and New Hampshire," Portsmouth, New Hampshire, May 24, 1960, Stenographic typescript	Typescript record of a public meeting held to review House Doc. 556, 83 <sup>rd</sup> Cong., 2 <sup>nd</sup> Sess.. New Hampshire witnesses urged the Corps of Army Engineers to recommend improvements that would benefit the Port of Portsmouth, New Hampshire.
1966	Ms. Letter of Acting Sec. of the Interior Arthur A. Baker, Washington, June 10, 1966, to Congressman James C. Cleveland, House of Representatives, Washington, DC	The Geological Survey Library does not have a map that shows a historic boundary between Maine and New Hampshire in the Piscataqua.
1975	Typescript: "Portsmouth Harbor, New Hampshire," United States. Army, Corps of Engineers. New England Division. Planning Division, Civil Works Project Files, Box 67. N.D. N.P.	The typescript list of the contents in Box 67, Piscataqua River Corps of Army Engineers projects, 1975-90. It includes correspondence, public hearings, maps, showing a concerted New Hampshire effort to gather the statistics, opinions, and community support necessary for removing obstacles to Piscataqua River navigation primarily for Navy vessels.
1985	<i>Port Series No. 1. Revised 1985. The Ports of Portland and Seaport, Maine, and Portsmouth, New Hampshire. Prepared by the Water Resources Support Center [Washington: Gov't Printing Office, 19 --]</i>	The report describes the Port of Portsmouth, New Hampshire, Corps of Army Engineers harbor/channel improvements, and port and harbor facilities, and includes a large foldout photograph map of harbor, "Port Facilities at Portsmouth, New Hampshire . . ." 1985.
1993	"List of Military Posts by State," National Archives Northeast Branch Typescript, p. 59.	The list includes, as in New Hampshire, the following for Ft. Sullivan: "Sullivan, Fort (Seavey's Island, Portsmouth)," chart location, 1842, p. 59. <i>See Location Reference Map, App. at 20a.</i>











Legend:	Cod Rock	G	Fishing Islands	K	Kitt's Rocks	N
	Logy Ledge	H	Wood Island	L	West Sister	O
	Fort McClary	I	Whales Back		East Sister	P
	Pepperrell's Cove	J	Light House	M		







Legend: Mast Cove Q  
Spinney Creek R





PORTSMOUTH HARBOR, N. H.

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LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING,

WITH A LETTER FROM THE CHIEF OF ENGINEERS, REPORT ON  
PRELIMINARY EXAMINATION OF PORTSMOUTH HARBOR, N. H.

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APRIL 11, 1916.—Referred to the Committee on Rivers and Harbors and ordered  
to be printed, with illustration.

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WAR DEPARTMENT,  
*Washington, April 10, 1916.*

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: I have the honor to transmit herewith a letter from the Chief of Engineers, United States Army, dated 8th instant, together with copy of a report from Maj. F. A. Pope, Corps of Engineers, dated December 18, 1915, on preliminary examination of Portsmouth Harbor, N. H., made by him in compliance with the provisions of the river and harbor act approved March 4, 1915.

Very respectfully,

NEWTON D. BAKER,  
*Secretary of War.*

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WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ENGINEERS,  
*Washington, April 8, 1916.*

From: The Chief of Engineers, United States Army.

To: The Secretary of War.

Subject: Preliminary examination of Portsmouth Harbor, N. H.

1. There is submitted herewith, for transmission to Congress, report dated December 18, 1915, by Maj. F. A. Pope, Corps of Engineers, on preliminary examination authorized by the river and harbor act approved March 4, 1915, of Portsmouth Harbor, N. H.



## PORTSMOUTH HARBOR, N. H.

Portsmouth Harbor is in the lower part of the Piscataqua River, which forms the boundary line between the States of Maine and New Hampshire. The city of Portsmouth has a population of about 11,000. Great Bay and the rivers tributary to the Piscataqua form a tidal basin having an area of about 15 square miles, which fills and discharges through Portsmouth Harbor, giving rise to strong currents with dangerous cross currents and eddies. The entrance channel has a least width of 500 feet between 30-foot contours, but navigation is difficult at times on account of the strong currents and rocky sides of the channel. The improvement apparently desired is the removal of South Beacon Shoal, part of the shoal off Badgers Island, part of Swards Rocks, and part of the Gangway Ledge, and the Goat Island Ledge with a view to eliminating dangerous cross currents and eddies and also affording increased channel widths. The district officer recommends that a survey be authorized in order to determine the advisability of undertaking improvement along the lines suggested, and the division engineer concurs in this recommendation.

3. This report has been referred, as required by law, to the Board of Engineers for Rivers and Harbors, and attention is invited to its report herewith, dated March 8, 1916. The board states that to carry out the desired improvement would require the excavation of a very large amount of rock in swift water at a high unit cost, and that such an improvement would be justified only by a very large and valuable commerce and a serious lack of navigation facilities, which conditions do not obtain in the present case. In the opinion of the board an effective improvement would be prohibitive in cost, and it therefore believes that it is not advisable for the United States to undertake the proposed work.

4. After due consideration of the above-mentioned reports, I concur in the views of the Board of Engineers for Rivers and Harbors, and therefore report that the improvement by the United States of Portsmouth Harbor, N. H., is not deemed advisable at the present time.

W. M. BLACK,

*Chief of Engineers, United States Army.*

## REPORT OF THE BOARD OF ENGINEERS FOR RIVERS AND HARBORS.

Third Indorsement.

**BOARD OF ENGINEERS FOR RIVERS AND HARBORS,**  
*March 8, 1916.*

**To the CHIEF OF ENGINEERS, UNITED STATES ARMY:**

1. The following is in review of the district officers report authorized by the river and harbor act of March 4, 1915, on preliminary examination of Portsmouth Harbor, N. H.

2. Portsmouth Harbor lies between the southwestern portion of the State of Maine and the southeastern portion of the State of New Hampshire. The city of Portsmouth, with a population of about 11,000, is situated in New Hampshire about 5 miles within the entrance to the harbor. The mean tidal range at Portsmouth is 7.8 feet. The large tidal basin formed by Great Bay fills and empties through Portsmouth Harbor, resulting in strong currents and eddies reported



## PORTSMOUTH HARBOR, N. H.

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to be very objectionable to navigation. The channel of approach to the city of Portsmouth is somewhat crooked, but has a least width of about 500 feet between the 30-foot contours. The shores are generally rocky.

3. The commerce of the harbor averages about 500,000 tons, consisting almost entirely of coal. The amount reported for 1914 was approximately 534,000 tons, of which 506,250 tons were coal. Formerly the bulk of the coal was carried in schooners of 23 to 26 feet draft, but under present conditions it is usually brought in large barges drawing 17 to 20 feet.

4. The improvement desired is apparently a straightening of the channel of approach by the excavation of rocky points and ledges, with a view to widening the fairway and reducing currents. The depth generally desired is 30 feet at mean low tide. The district officer's investigations lead him to the conclusion that the locality may be worthy of improvement, and he recommends that a survey with estimates be made. The division engineer concurs in this recommendation.

5. The board was not convinced of the advisability of the United States entering upon this improvement and interested parties were so informed and given an opportunity of submitting their views. Several communications have been received and given consideration.

6. Accompanying some of the communications are blue prints<sup>1</sup> on which are shown the improvement desired. It consists of the removal of rocky reefs and points at Goat Island, South Beacon Shoal, Gangway Rock, Sowards Rocks, and Badgers Island. To carry out this plan would require the excavation of a very large amount of rock in swift water at a high unit cost. While no detailed survey or estimate has been made, an examination of the map furnished indicates that the work would be very expensive. It is evident, therefore, that such improvement would be justified only by a very large and valuable commerce and a serious lack of navigation facilities. These conditions do not seem to obtain in the present case. It is recognized that the crooked channel, with rock ledges, swift currents, and eddies, is objectionable, but the amount of work that could be done toward reducing these difficulties with any moderate expenditure would be so small as to have no appreciable effect upon them. An effective improvement would, in the opinion of the board, be prohibitive in cost. The board therefore reports that it is not advisable for the United States to undertake the improvement of Portsmouth Harbor, N. H., at the present time.

7. In compliance with law, the board reports that there are no questions of terminal facilities, water power, or other related subjects which could be coordinated with the suggested improvement in such manner as to render the work advisable in the interests of commerce and navigation.

For the board:

FREDERIC V. ABBOT,  
Colonel, Corps of Engineers,  
Senior Member Present.

<sup>1</sup> One of the blue prints is printed in this connection.



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## PORTSMOUTH HARBOR, N. H.

## PRELIMINARY EXAMINATION OF PORTSMOUTH HARBOR, N. H.

UNITED STATES ENGINEER OFFICE,  
*Portland, Me., December 18, 1915.*

From: District Engineer Officer.

To: The Chief of Engineers, United States Army  
 (Through the Division Engineer).

Subject: Preliminary examination of Portsmouth Harbor, N. H.

1. The river and harbor act approved March 4, 1915, directs a preliminary examination of Portsmouth Harbor, N. H.

2. Portsmouth Harbor lies between the southeasterly portion of the State of New Hampshire and the southwesterly extremity of the State of Maine, and constitutes a portion of the boundary line between those two States. It is the only seaport worthy of the name in the State of New Hampshire. The city of Portsmouth is on the southerly bank, in the State of New Hampshire, and is about 5 miles above the mouth. While called Portsmouth Harbor, it is the continuation or outlet of the Piscataqua River system. There are a number of tributary streams, viz, Salmon Falls River, Cocheco River, Bellamy River, Oyster River, Lamprey River, and Exeter River. The Exeter and Lamprey Rivers flow into a large shallow depression called Great Bay, the waters of which, joining near its mouth the discharge from Oyster River and Bellamy River, empty into the Piscataqua. The navigable length of these streams is limited. A circle of about 12 miles radius, with Portsmouth as the center, will include the navigable heads of all of them. Falls in the rivers at their navigable heads in each case afford opportunity for development of water powers, which have been utilized to such extent that in each case important industries have developed. A similar circle with a 40-mile radius will include the principal sources of all of the streams named. The drainage area of the Piscataqua River system is about 900 square miles, 240 of which are in Maine and the remainder in New Hampshire. The tidal basin formed by Great Bay with the tributary rivers has an area of about 15 square miles. The drainage area is undulating and hilly, the prevailing rock granite with patches of mica schists and quartz rock. The forests have been largely cut. The fall from Northeast Pond, at the head of Salmon Falls River, which may be considered the upper Piscataqua, to the sea is 449 feet, giving a mean descent of 16.6 feet to the mile. I have no figures as to the run-off. The drainage area joins on the west that of the Merrimac River, and on the east that of the Mousam River, in the State of Maine. The great tidal basin of 15 square miles, which fills and discharges from and into Portsmouth Harbor, with a mean tidal variation of 7.3 feet at Portsmouth and 6.4 feet in Great Bay, together with the contracted width of the river, give rise to strong currents and dangerous cross currents and eddies. This feature is touched on more fully later in this report. A map<sup>1</sup> of Portsmouth Harbor, on which is a vicinity sketch showing the tributary system also, accompanies this report. For greater detail, attention is invited to United States Coast and Geodetic Survey Charts Nos. 0329 and 229.

3. The city of Portsmouth has a population of about 11,000. The manufacturing towns located at the navigable heads of the tributary





streams have an additional population of about 23,000. These places are interested in the navigable capacity of Portsmouth Harbor chiefly through Portsmouth being a distributing point for coal. Portsmouth itself has few large manufacturing interests aside from the navy yard, which lies on the opposite side of the river. Practically its entire commerce consists of coal, of which about 500,000 tons are handled annually. It is reported that a large munitions plant is about being established at this locality, and that brickmaking, which formerly existed along the river above Portsmouth, is now being renewed. Within a few years a large agricultural chemical works has been established on the river about a mile above Portsmouth, as well as a large terminal and storehouse for box material collected there and reshipped to the manufacturing plant of an extensive shoe industry.

4. Most of the tributary streams, viz, Cocheco, Bellamy, Lamprey, and Exeter Rivers, have been improved by the General Government as well as Pepperella Cove, on the northerly side of the entrance to the harbor, and Little Harbor, on the westerly side of the entrance.

5. Portsmouth Harbor itself was the subject of a preliminary examination in 1873, when a survey was made for a breakwater between Gerrish Island and Wood Island. The estimated cost of the work was \$150,000. (H. Ex. Doc. No. 84, 43d Cong., 1st sess.) Nothing was done.

Another survey was made in 1878. The project included, first, the closing of the channel between Great Island (Newcastle Island) and Goat Island to eliminate strong cross currents; second, removing a portion of Gangway Rock to a depth of 20 feet at mean low tide; and, third, removing a part of the ledge at the southwest point of Badgers Island to a depth of 10 feet at mean low tide. The estimated cost was \$150,000. (S. Ex. Doc. No. 29, 45th Cong., 3d sess.) The river and harbor act of September 19, 1890, added to this project the removal of Pier Rock to a depth of 12 feet at mean low tide. The work was completed in 1892, at a cost of \$130,567.61.

In 1882 a preliminary examination was made on a proposition for the extension and completion of the breakwater near the third bridge in Portsmouth Harbor, N. H., connecting Goat Island and Newcastle. This received an adverse report. (S. Ex. Doc. No. 30, 48th Cong., 1st sess.)

In the same year an examination was made "at and near the mouth of the Great Bay, so called, with a view to increasing the depth of the flow of water and improvement of the navigation of the Piscataqua River and its tributaries." A survey followed the report, which developed that what was desired was a dam across Piscataqua River with a view to maintaining high water level above and, by preventing tidal flow above the dam, eliminating strong currents in the river below. (S. Ex. Doc. No. 44, 48th Cong., 1st sess.) The estimated cost of this work was \$710,000. It was not undertaken.

In 1884 a preliminary examination was submitted on "Portsmouth Harbor, from the sea to the wharf." The report was unfavorable, on the ground that nothing should be done until the project then under way was completed. (H. Ex. Doc. No. 71, 48th Cong., 2d sess.)

In 1899 a report was made on a preliminary examination of "Pull-and-be-Damned Point, Portsmouth Harbor, with a view to its removal so far as the same is an obstruction to navigation." This point is



officially known as the ledge off Goat Island. The report was adverse. (H. Doc. No. 39, 56th Cong., 1st sess.)

In 1900 a preliminary examination was made of Hendersons Point with a view to removing a portion of the point for the purpose of improving navigation to the navy yard. A survey followed. The project submitted involved the removal of about 198,000 cubic yards of ledge. The estimated cost was placed at from \$800,000 to \$1,180,000. (H. Doc. No. 263, 56th Cong., 2d sess.) The work proposed was regarded as justifiable only in connection with the navy yard, and the project was afterwards executed by the Navy Department.

The river and harbor act of March 3, 1909, revived the proposition for the construction of a lock and dam in Piscataqua River. It was roughly estimated that such a work would cost not less than \$1,000,000 for construction, about \$25,000 annually for operation and maintenance, and that flowage damages might amount to about \$500,000. The report was adverse. (H. Doc. No. 1086, 61st Cong., 3d sess.)

6. The commerce of Portsmouth Harbor for the year ending December 31, 1914, was 534,015 short tons, made up as follows:

Bricks.....	23,625
Coal.....	508,250
General merchandise.....	1,400
Iron pipe.....	200
Lumber.....	2,500
Sand.....	40

The annual rail tonnage is about the same as that by water. The estimated value of this tonnage was \$2,379,302. The chief item was bituminous coal, large quantities of which are brought to Portsmouth in barges and schooners, discharged at that place, and distributed by rail to the various manufacturing concerns in the interior. Formerly this coal all came by schooners from Chesapeake Bay and large vessels were employed—craft which could be handled only on slack water, not because of lack of depth, but because of the strong currents. It is understood that this condition has changed somewhat and that coal is now brought for the most part in large barges. This does not, however, eliminate the danger from strong currents and cross currents. When the proposition for construction of a dam was being considered in 1909 it was claimed that because of the adverse conditions at Portsmouth the freight rates on coal were 5 cents per ton more than to Boston or Portland and that this could be saved by such improvement in conditions as the construction of the dam would bring about. It was pointed out, however, that this would produce no new business, but would only divert traffic from Boston and Portland, where terminal facilities had already been provided, and that the proposition could be nullified by a few strokes of the pen in changing the rail freight rate from Portsmouth to interior points. The barges which are used for bringing coal to Portsmouth are about 200 to 270 feet long, from 35 to 43 feet beam, draw from 17 to 20 feet, and carry from 1,500 to 3,000 tons of coal. There are usually three barges to a tow. The schooners are 300 feet long, 50 feet beam, and draw from 23 to 26 feet. Lumber vessels are smaller in size; bricks are handled on smaller barges, and fishing and other craft seeking shelter do not run up into Portsmouth Harbor, but find shelter in and adjacent to Pepperells Cove, the improvement of which is now nearly completed.



## PORTSMOUTH HARBOR, N. H.

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Portsmouth is an important railroad point. It is about midway between Boston and Portland, on one of the main lines of the Boston & Maine Railroad. A link, about 11 miles in length, connects it with Dover, N. H., where it joins a second main line between Boston and Portland. There is a link, about 40 miles long, which connects Portsmouth with Concord, Manchester, and other important manufacturing points, and another which during the summer affords service to York Beach and the vacation points along the southern Maine coast. Trolley systems, both north and south, afford communication with Boston and Portland, and intervening localities. In addition a number of lines run to the surrounding cities and towns in this busy manufacturing region.

7. The approach to Portsmouth Harbor from the sea has good depth, shoaling at the entrance to about 40 feet at mean low tide. Immediately at the entrance the width between 30-foot contours is about 4,500 feet, or about three-quarters of a nautical mile. For about 1½ miles the course is about north; the narrowest width is about 1,500 feet; and the depth good, ranging from 40 to 60 feet. The stream then bends through a right angle to the west, maintaining its width for about 4,000 feet, when it narrows sharply to about 800 feet and in a short distance to about 600 feet. This reach of the harbor is about 3,500 feet in length. It then bends sharply to the northwest for a distance of about 2,500 feet and widens somewhat. It then turns again to the west for about 4,000 feet, being in places not more than 500 feet between 30-foot contours. The course again changes to the northwest for about 2,000 feet, preserving much the same width to the railroad and highway bridge, which has a draw about 37 feet in width. This bridge need not again be referred to, as it is at the upper end of Portsmouth and above what may be regarded as Portsmouth Harbor. The shores on both sides of the harbor or river are rocky and numerous valleys between the ledges have given rise to many minor channels and much marsh, on both sides. The depth is in places as much as 80 feet and everywhere is good. With the great tidal basin above and the tide at the mouth of the harbor, which has a mean range of 7.8 feet, the currents produced in the narrowest portions of the river are excessive, being rated as great as from 6 to 7 knots. The sharp bends caused by the rocky points which admit of no erosion are responsible for strong cross currents and dangerous eddies. This combination of conditions makes Portsmouth Harbor a very difficult place to navigate.

8. I have had the place under study for some time in connection with the duty of making this preliminary examination, and on December 8, 1915, with a view to getting an expression of opinion by the people of Portsmouth, I held a hearing in that city. The following persons were present:

Capt. T. B. Hoyt.  
 Capt. E. M. Friese.  
 Horace Mitchell.  
 Capt. W. N. Phinney.  
 Mr. E. R. Currier.  
 Mr. R. J. Boyd.  
 Mr. E. Seybolt, secretary board of trade.  
 Mr. F. W. Lydston.  
 Luke Ashworth.  
 Oliver L. Friese.



Mr. C. W. Gray.  
 Mr. F. W. Hartford.  
 Ex-Mayor Fender.  
 W. E. Marvin.  
 Gustave Peyser.  
 Henry Payne.  
 C. W. Bass.  
 E. J. Freeman.  
 Frank Pryor.  
 Commandant of the navy yard.

The board of trade presented a resolution, as follows:

Whereas the matter of widening and clearing the channel of the Piscataqua River from Clarks Island to the Portsmouth bridge has been and from time to time is before Congress and the War Department; and

Whereas a representative of the War Department is about to conduct a hearing in this city on the 8th day of December, 1915, for the purpose of ascertaining the sentiment of this community in regard to such widening and clearing, and the advisability thereof:

*Be it resolved by the Portsmouth Board of Trade in meeting assembled, That it is the sense of the Portsmouth Board of Trade that the commercial well-being and growth of this city and community requires the widening and clearing of the channel of the Piscataqua River between Clarks Island and Portsmouth bridge; and that every encouragement should be given to any project looking to the accomplishment of that improvement; and that the officers of this association are hereby authorized and directed to cause the disposition of the Portsmouth Board of Trade in this regard to be made known to all proper officials and upon all proper occasions and to see to it that it is represented at all hearings pertaining to any phase of the subject matter, especially at the hearing to be held in Portsmouth on the 8th day of December, 1915, and there to urge upon officials all seemly argument and evidence favorable to the desired end.*

Mr. Seybolt, secretary of the board of trade, stated that the Portsmouth Gas Co. intends to build a new plant in Portsmouth opposite Swards Rocks. Mr. C. W. Gray, local manager of the Consolidation Coal Co., stated that his concern had made many improvements at their docks, so that larger boats can be handled. He was unable to state what reduction in the cost of handling coal could be brought about by an improvement of the harbor. Mr. F. W. Hartford, editor of one of the local papers, and connected with the Isles of Shoals Steamboat Co., spoke in favor of improvement and gave it as his opinion that the business of the port would be largely increased could some definite improvement be effected. He stated that two freight lines between Boston and Portsmouth had been abandoned because of the dangerous cross currents and conditions. Capt. T. B. Hoyt, captain of the tug *Mitchell Davis*, said that the trouble in handling vessels was increasing because of their greater draft. He had had several accidents. The commandant of the navy yard gave it as his opinion that some work should be done owing to the strong cross currents due to projecting ledges. Capt. W. N. Pinney, master of tugs at the navy yard, gave similar opinions and stated that an improvement would bring larger steam vessels to Portsmouth and would be effective in reducing freight rates. Mr. Ashworth, for the Portsmouth Yacht Club, desired some work which would give better access to the club quarters. Mr. E. R. Currier, secretary of the Masters, Mates, and Pilots Association, spoke relative to cost of freights by vessels of large and small tonnage, showing the advantage of the former. Mr. W. E. Marvin, for the Portsmouth Board of Trade, earnestly supported the proposition for improvement and stated that the resolution of that body was the result of considerable study and investigation.





## PORTSMOUTH HARBOR, N. H.

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It appears that while the act of March 4, 1915, directs simply a preliminary examination of Portsmouth Harbor, N. H., when the river and harbor bill of 1914 was before Congress an amendment was introduced providing for a preliminary examination in the following language:

Portsmouth Harbor, New Hampshire, from Clarks Island to Portsmouth Bridge, with a view to removing South Beacon Shoal, part of the shoal off Badgers Island, part of Swards Rocks, and part of the Gangway Ledge or Rocks and the Goat Island Ledge.

This fairly represents what my investigations have shown to be in general the desires of those interested in the proposition for improvement at this place. The depth desired is 30 feet at mean low tide, though some have expressed the opinion that the depth should be 35 feet. The work desired is the removal of some of the rocky shoals with a view not only to eliminating dangerous cross currents and eddies, but also to afford increased width needed in handling heavy vessels. The latter is necessary because of the strong currents which may be modified in some respects, but which can not be entirely done away with except at a prohibitive cost.

9. Portsmouth undoubtedly has a fine harbor, but is decidedly hampered by the current conditions described above. The place is of considerable commercial importance aside from the national interests represented by the very extensive naval establishment maintained here for 115 years. Some work has been done, but the amount expended on Portsmouth Harbor proper has not been great. The total expenditures under the river and harbor acts have been only \$130,567.61. Some improvement can undoubtedly be effected. Any excavation would probably consist entirely of rock. Whether or not enough could be done within the limits of reasonable cost to produce a benefit commensurate with the expenditure can be determined only by a survey. There are old and fragmentary surveys of the harbor in this office, but they are for the most part of detached localities and do not afford sufficient data for a satisfactory study of the situation. It is my opinion that Portsmouth Harbor, N. H., is so far worthy of improvement as to justify the cost of a careful survey from below Clarks Island up to Portsmouth Bridge, and I recommend that one be authorized.

10. The city owns two landings for small boats and owns another landing which has a frontage of about 100 feet, but this wharf is devoted to use as a landing for the navy yard. With the exception of the coal wharves and one of the fish wharves any of the other wharves are open to public use, subject to a wharfage charge. There is abundant space should more wharves be needed. Good terminal facilities exist. The only business requiring transfer facilities at the present time is the coal traffic. Modern coal-handling plants of good capacities exist sufficient to accommodate all business offered. A branch of the Boston & Maine Railroad skirts the river on its southerly shore from Portsmouth to the mouth of Great Bay.

11. There are no questions of water-power development, land reclamation, or other factors to be considered which would operate in any way to bring about cooperation or lessen the expense of improvement to the United States.

F. A. POPE,  
Major, Corps of Engineers.



## PORTSMOUTH HARBOR, N. H.

(First Indorsement.)

THE DIVISION ENGINEER, NORTHEAST DIVISION,  
New York City, December 20, 1915.

To the CHIEF OF ENGINEERS, UNITED STATES ARMY:

1. Forwarded.
2. As cost is an essential element in deciding the question of worthiness of the improvement, I concur with the district officer in recommending a survey.

FREDERIO V. ABBOT,  
Colonel, Corps of Engineers.

[For report of the Board of Engineers for Rivers and Harbors, see p. 2.]

## LETTER FROM THE PORTSMOUTH BOARD OF TRADE.

PORTSMOUTH, N. H., February 10, 1916.

GENTLEMEN: We acknowledge the receipt of public notice as of January 27, 1916, relative to the preliminary examination for Portsmouth Harbor, N. H.

In the hearing before Maj. Pope improvements were outlined, taking in Goat Island Ledge, South Beacon Shoals, and Badgers Island, a survey comprehensive in its scope and giving Portsmouth an uninterrupted line to the ocean.

With this I inclose a diagram<sup>1</sup> of Portsmouth Harbor, and if you will be good enough to glance at the Flat Iron Pier, so-called, recently constructed at the navy yard, and at the extreme easterly end of Gangway Rock, you will note that the water shallows to 19 feet, and the distance between the pier and this point at low tide is extremely narrow.

A vessel on its way up or down the river must needs make a particularly sharp turn at this point, to shape her turns for the narrows and the sea, and on her course, if she were to meet, at this point, a vessel going in the opposite direction, the narrowness of this part of the river would make it extremely difficult to pass.

We are bringing into Portsmouth 500,000 tons of coal every year, and the tendency is to eliminate coal-carrying barges and bring coal to this port in large colliers, drawing frequently from 18 to 25 feet, and the discharging point is well up the river, at a point where the railroad comes down to the water. We are short in available wharfage, and by the removal of South Beacon Shoals all the lower docks in the South End would become available.

There have been several instances where shipping concerns had in view establishing a home port in Portsmouth, but the narrowness of the channel and lack of wharfage has prevented their final choice of Portsmouth as a port. The river is free of ice and accessible at all times, and with its depth of water and widening of South Beacon Shoals would be most advantageous to the navy yard and to the commerce that yearly comes to this port.

It is to be hoped that you will give this request for survey favorable consideration.

Yours, truly,

FREDERICK M. SISE, President.

THE BOARD OF ENGINEERS FOR RIVERS AND HARBORS.

LETTER FROM FISCATUA HARBOR, NO. 23, OF THE AMERICAN ASSOCIATION<sup>2</sup> OF MASTERS, MATES, AND PILOTS OF THE UNITED STATES.

PORTSMOUTH, N. H., February 17, 1916.

GENTLEMEN: I beg leave to inclose herewith a document<sup>3</sup> explanatory of the requests for improvement in the channel of the Piscataqua River at Portsmouth, N. H. A "public notice" dated Washington, D. C., January 27, 1916, in reference to preliminary examination of "Portsmouth Harbor, N. H.," has been received.

<sup>1</sup> Smaller map printed.

<sup>2</sup> Not printed.



## PORTSMOUTH HARBOR, N. H.

9. This is the only harbor north of Hatteras which is always free from ice, where vessels of any draft can find harbor regardless of tide, and a ship half sunk could be brought to the dock, and if a dry dock of proper depth was built could be placed in it.

10. This harbor has natural advantages not found elsewhere along the coast of the United States, and should be improved as a measure of preparedness.

Therefore be it

*Resolved*, That Piscataqua Harbor, No. 83, American Association of Masters, Mates and Pilots, does most earnestly pray that such portions of Goat Island Shoal and the shoal extending out into the channel from Gangway Rock be removed; that we do believe this to be of vital importance to the city of Portsmouth and the State of New Hampshire, and to the town of Kittery, in the State of Maine, but more especially to the Government of the United States as represented here at the Portsmouth (N. H.) Navy Yard.

Very respectfully,

E. R. CURRIER, *Secretary*.

THE BOARD OF ENGINEERS FOR RIVERS AND HARBORS.

## LETTER FROM HON. H. F. HOLLIS.

UNITED STATES SENATE,  
Washington, D. C., February 22, 1916.

GENTLEMEN: I inclose herewith a communication<sup>1</sup> from the president of the Portsmouth Board of Trade, Portsmouth, N. H., regarding harbor improvements at Portsmouth Harbor.

I am glad to commend to your careful notice the communication of Mr. Sise. I know him and I know the personnel of the Portsmouth Board of Trade. They are reliable men and their opinion is valuable.

I can also speak from some personal knowledge of Portsmouth Harbor. It is a deep harbor and it never freezes, but it is narrow in some places, as the plan indicates.

I am also glad to commend to your attention the communication from Piscataqua Harbor, No. 83, of Portsmouth N. H., dated February 17, a copy<sup>2</sup> of which I inclose.

Sincerely,

HENRY F. HOLLIS.

THE BOARD OF ENGINEERS FOR RIVERS AND HARBORS.

## LETTER FROM HON. C. A. SULLOWAY.

HOUSE OF REPRESENTATIVES,  
Washington, February 25, 1916.

GENTLEMEN: I am greatly interested in the matter of a survey of Portsmouth Harbor, relative to proposed improvements which will greatly aid the city from a commercial standpoint. I inclose you a letter<sup>1</sup> received from the president of the board of trade, which speaks for itself. I sincerely hope that your board in its wisdom will make this survey. With a growing shipping business, with every prospect that something will be done in the immediate future to develop the American merchant marine, as a matter of aid to National defense and the further improvement of this harbor which is never frozen and which has the deepest waterway of any harbor on the Atlantic coast, I sincerely trust that the requested survey may be ordered.

With kindest regards and best wishes, I am,

Sincerely,

C. A. SULLOWAY.

THE BOARD OF ENGINEERS FOR RIVERS AND HARBORS.

## LETTER FROM THE AMERICAN ASSOCIATION OF MASTERS, MATES, AND PILOTS.

CAMDEN, N. J., February 26, 1916.

GENTLEMEN: I beg leave to inclose herewith a document<sup>2</sup> explanatory of the requests for improvement in the channel of the Piscataqua River at Portsmouth, N. H. A "Public notice," dated Washington, D. C., January 27, 1916, in reference



to preliminary examination of "Portsmouth Harbor, N. H.," has been received, read, and acted upon in regular meeting of Piscataqua Harbor, No. 83, American Association of Masters, Mates, and Pilots, and the secretary instructed to answer as follows:

Piscataqua Harbor, No. 83, of Portsmouth, N. H., whose membership is composed of licensed officers who navigate the waters of Piscataqua River, the coast of the United States, and the oceans of the world, made petition to Congress through its national body with the result that the river and harbor act, approved March 4, 1915, contained provision for a preliminary examination of "Portsmouth Harbor, N. H."

The following is quoted from the "Public notice" above referred to:

"The required examination has been made by the district officer, and his report thereon is favorable to the extent of recommending a survey from Clarks Island to Portsmouth Bridge, with view to determining the advisability of removing some of the rocky shoals.

"In accordance with law, the report has been referred to the Board of Engineers for Rivers and Harbors for consideration and recommendation. From the information presented, the board is not convinced of the advisability of the United States undertaking any improvement at this locality at the present time for the following reasons:

"(a) Portsmouth Harbor now has a channel from the sea to the bridge above the city, 30 feet or more in depth for a width of 500 feet or more.

"(b) The proposed removal of rock and projection points to an extent sufficient to be of material benefit would be unduly expensive."

To which Portsmouth Harbor, No. 83, makes the following reply:

1. With ships such as the cruisers and colliers which come to this port, whose length run to 500 and 530 feet, it can be hardly conceded that the working width of the channel between parallel lines at Goat Island Ledge is more than 400 feet. Between Pumpkin Island Ledge and the shoal which extends out into the channel from Gangway Rock, the extreme width of the channel seems to be about 450 feet. This shoal, which extends out into mid-channel, has 19 feet at mean low tide, which will leave but about 17 feet at low run of spring tides. This, taken with the fact of an 80° turn at this point, makes for danger with ships drawing 27 feet of water.

2. While the removal of the rocks and ledges as requested in the original petition is considered necessary, it is considered of vital importance that a portion of Goat Island Ledge and the shoal running out into the channel from Gangway Rock be removed as soon as possible. It has been estimated that the removal of 3,000 cubic yards from Goat Island Ledge and 30,000 cubic yards from the shoal off Gangway Rock would be of material benefit, and remove a great share of the element of danger which now exists.

3. In approaching Goat Island Ledge from the city, there is an 80° turn within three ships' lengths of the narrow part of the channel, and the current in this river being swift and uncertain, the meeting of two large vessels at this point would be accomplished with a large element of danger.

4. It can be easily seen that a large vessel drawing upward of 27 feet in going up to Portsmouth, when she arrives at the turn at Pumpkin Island Shoal, a turn of 80°, will be obliged to make a large turn or sweep toward the navy yard in order to bring her head around enough to make the course to the city, and that if she should meet a large vessel going down at this point both vessels would be in danger, the first of fouling vessels at the navy yard, and failing that, in going on Pumpkin Island Shoal, and the other would be in grave danger of the shoal which projects out from Gangway Rock.

5. Several vessels have grounded on the shoal extending out from Gangway Rock, with more or less serious damage, and it can be seen that should a large sail or steam vessel, or a navy cruiser ground there, the consequence might be serious. Indeed the expense might be far above the expense of clearing the channel to a reasonable degree.

6. About 25 years ago the shoal at Gangway Rock was cut down to 19 feet, which at that time seemed enough as the vessels coming here at that time did not draw as much water as now, but now they draw upward of 27 feet, and require much more room to navigate with safety, and commerce has been turned away from this port on account of this shoal.

7. The currents of flood and ebb set strong against the quays at the navy yard. They would be straightened and much relieved by this cut, and the element of danger be lessened, and much more room would be given at the turn.

8. What is once removed from this channel will never have to be removed again and is all clear gain, which does not correspond to the conditions at Boston, New York, and the Delaware, as well as most harbors on the Atlantic coast, where the work has to be repeated at frequent intervals on account of sand and mud, and some of the material here would actually fall over into deep water.





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## PORTSMOUTH HARBOR, N. H.

9. This is the only harbor north of Hatteras which is always free of ice, where vessels of any draft can find harbor regardless of tide, and a ship half sunk could be brought to the dock, and if a dry dock of proper depth was built, could be placed in it.

10. This harbor has natural advantages not found elsewhere along the coast of the United States, and should be improved as a measure of preparedness.

Therefore be it

*Resolved*, That Piscataqua Harbor, No. 83, of the American Association of Masters, Mates and Pilots, does most earnestly pray that such portion of Goat Island Shoal and the shoal extending out into the channel from Gangway Rock be removed. That we do believe this to be of vital importance to the city of Portsmouth and the State of New Hampshire, and to the town of Kittery, in the State of Maine, but more especially to the Government of the United States as represented here at the Portsmouth (N. H.) Navy Yard.

Very respectfully,

M. D. TENNISWOOD,  
*National Secretary.*

The BOARD OF ENGINEERS FOR RIVERS AND HARBORS.

## LETTER FROM HON. J. H. GALLINGER.

UNITED STATES SENATE,  
Washington, D. C., February 14, 1916.

GENTLEMEN: I beg to call your attention to the inclosed letter, with accompanying map, from Frederick M. Sise, Esq., of the Portsmouth (N. H.) Board of Trade, in reference to the proposed further improvement of Portsmouth Harbor.

Improvements in this locality are of the most permanent nature, owing to the firm rock bottom and the absence of silt in the river, and the cost of maintenance is therefore practically nothing. I venture to express the hope that the contemplated improvement may receive your careful consideration with a view to the ultimate adoption of the project.

Very respectfully, yours,

J. H. GALLINGER.

The BOARD OF ENGINEERS FOR RIVERS AND HARBORS.

## LETTER FROM THE PORTSMOUTH BOARD OF TRADE.

PORTSMOUTH, N. H., February 11, 1916.

DEAR SIR: In the early autumn we had a public hearing before Maj. Pope, an Army engineer, on the advisability of making a survey of the river with the purpose in view to remove Goat Island Ledge, South Beacon Shoals, and the end of Badgers Island. The report of Col. Pope was favorable to making this survey, and I believe the money was appropriated for this purpose.

The Board of Engineers for Rivers and Harbors has now sent a public notice stating that it is inadvisable to undertake any improvement at this locality for the following reasons:

(a) Portsmouth Harbor now has a channel from the sea to the bridge above the city, 30 feet or more in depth for a width of 500 feet or more.

(b) The proposed removal of rock ledges and projecting points to an extent sufficient to be of material benefit would be unduly expensive.

The Board of Engineers for Rivers and Harbors, Southern Building, Washington, D. C., under whose control this matter comes, has asked all who are interested to submit arguments in favor of this survey.

The purpose of this letter is to lay before you an outline of what is required and ask if you will use your good offices to bring about the survey. If you will be good enough to glance at the map of the harbor inclosed, you will note that all outside the broken black line is proposed to be removed. We are not so particular about Goat Island Ledge, marked in black with a cross, or the end of Badgers Island, marked with a circle, but that portion lying in the river outside the broken black line marked South Beacon Shoals and Gangway Rock is, we think, most essential to be removed. We bring into Portsmouth about 500,000 tons of coal every year and barges are being superseded by colliers and the narrow channel between Gangway Rock and the end of the Flat Iron Pier, marked with a cross, at the navy yard, is such that it would be difficult for two of the larger colliers to pass each other in the river.



## PORTSMOUTH HARBOR, N. H.

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We have been short of available wharfrage, and by the removal of Gangway Rock and South Deacon Shoals, all the wharfrage at the South End, so called, can be utilized. There have been several instances recently where shipping concerns had in view making Portsmouth their home port, but the narrowness of the channel and the lack of available wharfrage has precluded the materializing of their plans.

It is to be hoped that you can render us some assistance, and with your familiarity with the harbor can, no doubt, state to the board of engineers quite clearly the pressing needs that for commercial purposes the widening of the river presents.

Yours, truly,

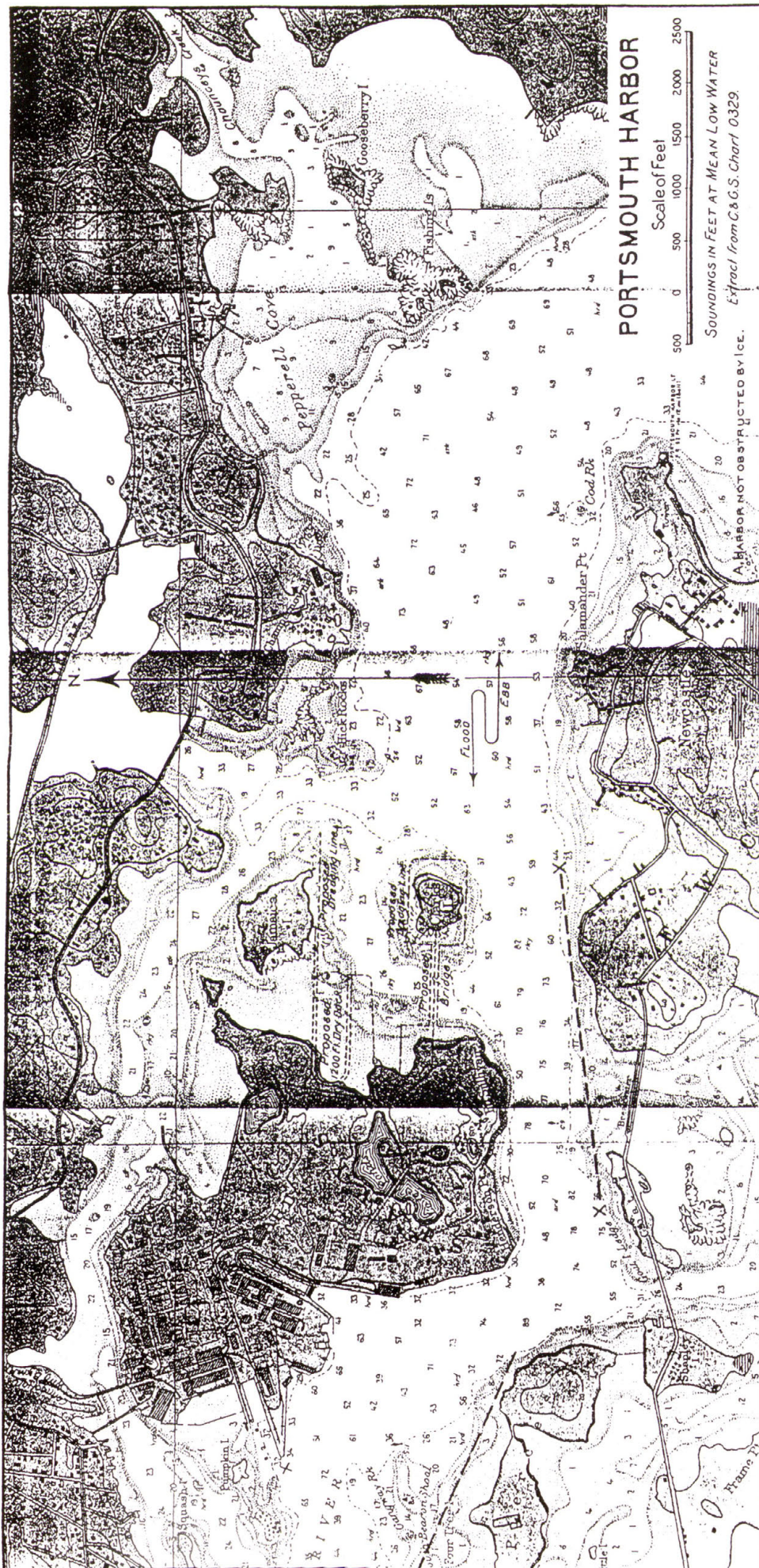
FREDERICK M. SISE.

HON. JACOB H. GALLINGER,  
*United States Senate, Washington, D. C.*

HD-64-1-vol 24-22







House Doc. No. 1010; 64th Cong., 1st Sess.

1698



Dear to Gen. Wentworth

11 July 1772.

(No. 38.)





Whitehall July 1<sup>st</sup> 1772. 249

Sir,

I have received your dispatches  
No. 40. 41. & 42. and have laid them before the  
King.

The Lords of the Committee of Council  
have not yet come to any determination upon  
the report of the Board of Trade respecting  
the Lands on Connecticut River heretofore  
considered as part of the Province of New Hampshire.

When their Lordships have come to any  
Resolution, and His Majesty shall have  
signified His Pleasure thereupon, you will  
of course be acquainted with it.

The Appointment of Comrs. for  
the Adjustment of the Boundary Line  
between New Hampshire & New York, would  
be equally improper, and as I conceive  
unprecedented, in a case where the Soil in



C.O.

5

937

1772

July 1<sup>st</sup>

Whitehall

July 1<sup>st</sup>

1772

July 1<sup>st</sup>

1772

July 1<sup>st</sup>

1772



of course be acquainted with it.

The Appointment of Commrs, —  
for the Adjustment of the Boundary Line  
between New Hampshire & New York, would  
be equally improper, and as I conceive  
unprecedented, in a case where the Soil in  
both Provinces belongs to the Crown. — His  
Majesty has, with equal candour & justice,  
declared the Boundary, and I have no reason  
to suppose that the Governor of New York  
could be less active & vigilant than yourself  
to

37  
ORIGINAL  
MANUSCRIPT  
OF THE  
SECOND OFFICE, LONDON



It want the authority and the Jurisdiction,  
that belong in any case where the interests  
of the Crown should be concerned.

James W. Hillsborough.



## CHAPTER 564.

AN ACT INCREASING THE NUMBER OF MEMBERS OF THE BOUNDARY COMMISSION, INCLUDING A COMMERCIAL FISHERMAN, AND PROVIDING FOR A STUDY OF BOTH THE MAINE AND THE MASSACHUSETTS BOUNDARIES WITH NEW HAMPSHIRE.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

**564:1 Commission.** The governor, with the advice and consent of the council, shall appoint five suitable persons resident in this state, as commissioners upon the part of the state of New Hampshire to enter into, with the state of Maine and the commonwealth of Massachusetts, by and through the commissioners who may be appointed under or by virtue of the laws of the state of Maine and the commonwealth of Massachusetts, an agreement or agreements and compact or compacts, defining and ascertaining the common, lateral marine boundary between the state of New Hampshire and the state of Maine, and the state of New Hampshire and the commonwealth of Massachusetts; provided that the commissioners for the state of New Hampshire shall include the three commissioners in office on the effective date of this act appointed pursuant to 1971, 429:1. One of the commissioners appointed on behalf of the state of New Hampshire shall be a commercial fisherman.

**564:2 Powers.** The commissioners on the part of the state of New Hampshire are hereby authorized and empowered to meet, from time to time, such commissioners as may be appointed for the same purposes and with substantially similar powers on the part of the state of Maine and the commonwealth of Massachusetts, to define and ascertain such common, lateral marine boundary, in order to prevent future mistakes and disputes respecting the same. The commissioners on the part of this state are authorized and empowered, in the performance of their duties hereunder, to agree upon such principles respecting the location of such common, lateral marine boundary as from the best evidence they can obtain may appear to them just and reasonable; and they may employ, within the limits of available funds, such experts and consultants as they think proper to assist them in the performance of their duties.

**564:3 Mutual Agreement.** If mutual agreement is reached between the state of New Hampshire and the state of Maine or between the state of New Hampshire and the commonwealth of Massachusetts, or both, it shall be reduced to writing in the form of a compact or compacts and then signed by the commissioners of each state involved, or by at least a majority of each body. Such compact or compacts shall be thereupon submitted by the respective commissioners to the legislatures of the states in mutual agreement for approval by appropriate legislative acts. Upon approval by legislative act by each state, such compact or compacts shall become provisionally effective and binding upon this state, subject only to the consent and approval of the congress of the United States.

**564:4 Approval of Compact.** The commissioners on the part of this state, together with the commissioners appointed by the state of Maine and the commonwealth of Massachusetts, shall have the power to apply to the congress of the United States for its consent or approval of the compact or compacts entered into by said states. Upon the consent and approval thereof by the Congress, such compact or compacts shall become final and binding upon the state of New Hampshire and shall be filed in the office of its secretary of state.





1973]

## CHAPTER 565

1105

564:5 **Vacancy.** If a vacancy shall occur by death, resignation or otherwise of those appointed as commissioners for the state of New Hampshire hereunder, the governor, with the advice and consent of the council, shall fill same.

564:6 **Limitation.** If the commissioners on the part of this state shall be unable to reach written agreement hereunder with the commissioners appointed by the state of Maine and the commonwealth of Massachusetts before March 1, 1975, their powers hereunder shall terminate, unless extended by the legislature.

564:7 **Compensation and Expenses.** The commissioners on the part of this state shall receive their necessary expenses in the performance of their official duties and such reasonable per diem as may be fixed by the governor and council.

564:8 **Transfer Appropriation.** Any funds remaining in the appropriation authorized by 1971, 429:8, are hereby transferred to be expended by the commission under the provisions of this act.

564:9 **Repeal.** 1971, 429 establishing an interstate boundary commission between New Hampshire and Maine is hereby repealed.

564:10 **Effective Date.** This act shall take effect upon passage.

[Approved July 5, 1973.]

[Effective date July 5, 1973.]



**CHAPTER 580.****AN ACT TO DEFINE THE OFFSHORE JURISDICTION OF THE STATE.**

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

580:1 Extension of Territorial Boundaries Seaward. Amend RSA 1 by inserting after section 13 the following new subdivision:

**Seaward Limits of Jurisdiction**

1:14 **Extent.** Subject to such lateral marine boundaries as have been, are herein or shall hereafter be legally established between this state and the state of Maine and the commonwealth of Massachusetts, the territorial limits and jurisdiction of this state shall extend to and over, and be exercisable with respect to, waters offshore the coast of this state as follows:

I. **Marginal Sea.** The marginal sea to its outermost limits as said limits may from time to time be defined or recognized by the United States of America by international treaty or otherwise. The coastal baseline of this state from which the breadth of the marginal sea is measured shall be drawn in conformity with the treaties to which the United States is a party. Subject to future change as hereinabove set forth, the marginal sea is three nautical miles in breadth.

II. **The High Sea.** Beyond the marginal sea, to the outer limits of the territorial sea of the United States of America and to whatever limits may be recog-



nized by the usages and customs of international law or any treaty or otherwise according to law. This state claims title for a distance of two hundred nautical miles from the coastal baseline of the state, or to the base of the continental shelf, whichever distance is the greater.

III. Submerged Land. All submerged land, including the subsurface thereof, lying under the aforementioned waters.

1:15 Lateral Boundaries. Until otherwise established by law, interstate compact or judgment of the supreme court of the United States, the lateral marine boundaries of this state shall be and are hereby fixed as follows:

I. Adjoining the State of Maine: Beginning at the midpoint of the mouth of the Piscataqua River; thence southeasterly in a straight line to the midpoint of the mouth of Gosport Harbor of the Isles of Shoals; thence following the center of said harbor easterly and southeasterly and crossing the middle of the break-water between Cedar Island and Star Island on a course perpendicular thereto, and extending on the last-mentioned course to the line of mean low water; thence 102° East (true) to the outward limits of state jurisdiction as defined in RSA 1:14. As to that section of the lateral marine boundary lying between the mouth of the Piscataqua River and the mouth of Gosport Harbor in the Isles of Shoals, the so-called line of "lights on range", namely, a straight line projection southeasterly to the Isles of Shoals of a straight line connecting Fort Point Light and Whaleback Light shall be *prima facie* the lateral marine boundary for the guidance of fishermen in the waters lying between Whaleback Light and the Isles of Shoals.

II. Adjoining the Commonwealth of Massachusetts: As defined in chapter 115, 1901; and thence one hundred and seven degrees East (true) to the outward limits of state jurisdiction, as defined in RSA 1:14.

III. The fixation of lateral marine boundaries herein is without prejudice to the rights of this state to other marine territory shown to belong to it. By the fixation of the foregoing lateral marine boundaries, this state intends to assert title to its just and proportional share of the natural resources in the Atlantic Ocean lying offshore its coastline and within the limits defined in RSA 1:14.

1:16 Ownership. The ownership of the waters and submerged lands enumerated in or described in RSA 1:14 and 15 shall be in this state. The department of resources and economic development and the fish and game department, in cooperation with other interested agencies and departments of the state and with the approval of the governor and council, shall be authorized to issue rules and regulations for the purpose of protecting fishing rights, marine life, mining and mineral rights and oil and gas rights of the state and to control pollution in the seaward territory of the state as defined in RSA 1:14, II and III.

1:17 Application of Laws. The jurisdiction of the courts of this state over civil and criminal matters shall extend to all territory within the marine boundaries of this state as defined in this subdivision, which has not been heretofore incorporated in any town, city or county. In such event, all such proceedings may be instituted in the district or municipal court of the district or municipality closest to the place where the alleged offense occurred or cause of action arose or in the superior court holden in Rockingham county, to the same extent as if the



alleged offense occurred or cause of action arose within said district, municipality or county, any other jurisdiction or venue statute to the contrary notwithstanding.

**1:18 Law Enforcement Zone.** Notwithstanding the provisions of RSA 1:17, the code of criminal laws of the state as set forth in RSA Titles LVIII and LXII, and the fish and game laws and regulations of the state in RSA Title XVIII shall not be applied and enforced easterly of the outer line of the marginal sea as defined in RSA 1:14, I, until such time as the governor by proclamation made with the advice and consent of the council determines that the public interest requires application of such laws and regulations easterly of such line and that the capacity of the state so permits. The limitations contained in this section are without prejudice to the claims of this state to the larger marine territory defined in RSA 1:14-16.

**1:19 Penalty.** Notwithstanding the provisions of RSA Title LXII, any person, natural or otherwise, convicted of violating any rule, regulation or specific laws promulgated for the purposes of protecting the rights enumerated in this subdivision, shall be punished by a fine not to exceed ten thousand dollars.

**580:2 Repeal.** RSA 211:19 relative to the definition of waters under the jurisdiction of the state, and all other acts and parts of acts inconsistent with this act are hereby repealed.

**580:3 Effective Date.** This act shall take effect upon passage.

[Approved July 5, 1973.]

[Effective date July 5, 1973.]







STATE OF MAINE  
OFFICE OF THE GOVERNOR  
AUGUSTA, MAINE  
04330

KENNETH M. CURTIS  
GOVERNOR

February 6, 1973

The Honorable Meldrim Thomson, Jr.  
Governor of New Hampshire  
State House  
Concord, New Hampshire 03301

Dear Governor Thomson:

Thank you for your letter of January 31, 1973, which I received yesterday, February 5. I have looked carefully into the points of your letter concerning the arrest by Maine coastal wardens of a New Hampshire lobsterman, Edward B. Heaphy of Dover. It would appear Maine wardens acted properly in this case, and thus it would seem improper for me to intervene in court action against Mr. Heaphy or to order the Maine Department of Sea and Shore Fisheries to desist from taking similar police action in the future.

On February 24, 1970, Maine and New Hampshire officials met in Portland and agreed upon an off-shore boundary for fishing purposes pending the final adoption of a line to be drawn by a bistate commission. Charts showing this boundary were circulated among fishermen of both states by Maine and New Hampshire wardens.

Our Department of Sea and Shore Fisheries informs me that Mr. Heaphy was arrested January 18 nearly one-half mile on the Maine side of this line. And while he may regard the area in which he was arrested as being New Hampshire waters, it should be noted that the New Hampshire delegates who agreed at the Portland conference to abide by the line - and thus recognize the area as being Maine waters - included Mr. Leonard W. Conant, director of your state's Fish and Game Department; Richard Seamon, chief of the Department's of Inland and Marine Fisheries Division; Bernard S. Cram, chief of the Department's Law Enforcement Division; and Attorney Upton of Concord.



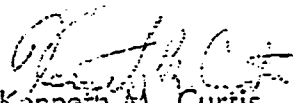
The Honorable Meldrim Thomson, Jr.  
Governor of New Hampshire

-2-

The best way, of course, to avoid future misunderstandings of this type would be for a border to be finally and officially adopted. But until that time, if we were not to continue to recognize the temporary fishing boundary, we would have a situation of Maine and New Hampshire lobstermen fishing the same waters side by side, each subject to different trap and size restrictions imposed by their respective states. The New Hampshiremen would be keeping lobsters of a size Mainers would be forced to throw back; New Hampshiremen would be stringing a number of traps to a trawl for which the Mainers would be arrested.

Needless to say, such a situation would be grossly unfair to Maine fishermen and damaging to the Maine lobster industry.

Sincerely,

  
Kenneth M. Curris  
Governor

KMC:jk



March 22, 1973

The Honorable Richard Upton  
Chairman, New Hampshire Fish  
and Game Commission  
Centre Street  
Concord, New Hampshire 03301

Dear Dick;

As you enter further negotiations with representatives from the State of Maine concerning the boundary dispute relative to our lateral marine boundary, you may convey my firm position that residents of this state have the right to fish at least up to the line known as "lights on range".

This statement is made without prejudice to our claim for a more northerly boundary, but is made in an effort to clarify our position so as to work toward a temporary accommodation pending ultimate boundary agreement.

Sincerely,

Meldrim Thomson, Jr.

MT:nl/cc



May 31, 1973

The Honorable  
Warren B. Rudman  
Attorney General  
State House Annex  
Concord, New Hampshire

Dear Mr. Rudman,

I appreciate the briefing which you, Deputy Attorney General Souter, and Mr. Upton gave me this afternoon relative to the boundary matter. It is my understanding that, as a result of the meeting, the boundary bill will be changed to run approximately lights on range to the Isles of Shoals and then eastward on a 102° angle.

Further, that you will be prepared to file a suit in the U. S. Supreme Court seeking the establishment of our rightful maritime boundary and such injunctive relief as may be necessary to protect our fishermen in the presently disputed area.

Please let me see your pleadings immediately prior to going to the printer and make your plans to see that the file is in the Supreme Court not later than next Wednesday.

Sincerely,

Meldrim Thomson, Jr.

MT/fkp







State of Maine  
Executive Department  
Augusta, Maine  
04330

KENNETH M. CURTIS  
GOVERNOR

June 8, 1973

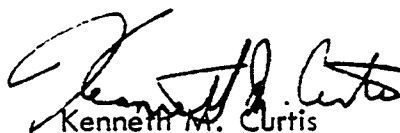
David H. Souter  
Deputy Attorney General  
State of New Hampshire  
Concord, New Hampshire

Dear Mr. Souter:

This is to acknowledge receipt of three copies of the Motion of the State of New Hampshire for Leave to File Complaint and Complaint in New Hampshire v. Maine regarding the seaward boundary between the two states.

Thank you for sending this material to me.

Sincerely,

  
Kenneth M. Curtis  
Governor

KMC:jk



JON A. LUND  
ATTORNEY GENERAL



GEORGE C. WEST  
JOHN W. BENOIT, JR.  
RICHARD S. COHEN  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04330

July 9, 1973

David H. Souther, Esquire  
Deputy Attorney General  
Office of the Attorney General  
State House Annex  
Concord, New Hampshire

Re: New Hampshire v. Maine, Supreme Court of the United  
States, October Term, 1972, No. 64, Original.

Dear Dave:

This is to confirm in writing the offer of the Maine Interstate Boundary Commission to resume negotiations with the New Hampshire Interstate Boundary Commission concerning the marine boundary between Maine and New Hampshire.

After due consultation with the appropriate Maine State Officials and the Maine Interstate Boundary Commission, I can assure you that the Maine Commission is ready to resume immediately the marine boundary negotiations with the New Hampshire Commission. I can also assure you that the Maine Commission appears to me to be willing to engage in these negotiations in complete good faith, with an open mind and a sincere desire to settle this matter fairly and promptly. I can further assure you that it appears to me that the Maine Commission will consider objectively all evidence, principles, and arguments that may be presented by the New Hampshire Commission, and that each member of the Maine Commission will exercise his independent judgment on all matters relating to the marine boundary.

Accordingly, if you can promptly render to me similar assurances, I would suggest that we agree to request the Supreme Court of the United States to extend the time for my reply brief to your Motion for Leave to File Complaint, until July 1, 1974.




David H. Souther, Esquire  
Page 2  
July 9, 1973

I further suggest that the following procedure be adopted in the resumed negotiations: that the Maine Commission will cause to be presented in the initial sessions such evidence, principles, and arguments relative to the marine boundary as may be available at that time, all of which are to be received with an open mind and viewed objectively by the New Hampshire Commission; thereupon, the New Hampshire Commission will cause to be presented in the succeeding sessions such further evidence, principles, and arguments relative to the marine boundary as may be available at that time, all of which are to be received with an open mind and viewed objectively by the Maine Commission. Thereafter, each Commission will be afforded an opportunity to present such further evidence, principles, and arguments as each may wish to present. At the conclusion of all of which presentations, the members of both Commissions will discuss jointly and frankly all of the foregoing material and will attempt to reach an equitable resolution of this matter.

Please inform me promptly as to whether or not the above-stated assurances and suggested procedure are satisfactory to you, and whether or not you can offer me similar assurances.

Sincerely,

  
CHARLES R. LAROUCHE  
Assistant Attorney General

CRL/ec

cc: Honorable Kenneth M. Curtis, Governor of Maine  
Mr. Richard N. Berry, Maine Interstate Boundary Commission  
Mr. Frederick Brown, Maine Interstate Boundary Commission  
Mr. Ernest Hoyt, Maine Interstate Boundary Commission  
Spencer Apollonio, Commissioner, Sea and Shore Fisheries



JON A. LUND  
ATTORNEY GENERAL



JOHN W. BENOIT, JR.  
RICHARD S. COHEN  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04330

June 24, 1974

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

Re: New Hampshire v. Maine

Dear Dave:

Thank you for your letter of June 21. My secretary and I have proofread the draft which you enclosed with your letter as against the latest revision of my draft; she has written in in pen the differences between my latest draft and your draft. I will add to my draft the sentence which you have added on page 2 at the bottom thereof concerning markers precisely as you have written it and will incorporate therein the changes that you made concerning the Boundary Commissioners of New Hampshire.

I hope that you and Dick Upton will reexamine the draft news release carefully and give me a call if you see any further changes that may be needed.

I also hope that you and Dick will finalize our draft "Motion for Entry of Judgment by Consent of Plaintiff and Defendant," and get it to me by Wednesday morning early. I also hope that if there are any substantive changes at all that you or Dick would call me tomorrow so that we can get the changes by telephone and get our draft in finished form so that I can provide that to our Governor and Council.

Thanks for your cooperation.

Sincerely,

CHARLES R. LAROCHE  
Assistant Attorney General

CRL:mfe  
enc.

P.S. I suggest that we add a reference in the ~~order~~ <sup>Motion</sup> to a map showing the agreed boundary line. I will have someone prepare such a map, will reproduce it and send it to you hopefully before the end of today. Would you or Dick Upton provide the additional referenced language to that map.





NEWS RELEASE

June 26, 1974

The Attorneys General of Maine and New Hampshire today issued a joint public announcement concerning the possible settlement of the case involving the <sup>latotal</sup> marine boundary line between New Hampshire and Maine which is now pending trial in the Supreme Court of the United States.

Attorney General Lund of Maine and Attorney General Rudman of New Hampshire announced that Counsel for the two states have reached a tentative agreement for settlement of the marine boundary line dispute. Counsel for the two States have agreed to submit to the Supreme Court a "Motion for Entry of Judgment by Consent of Plaintiff and Defendant" which would specify the precise marine boundary line, provided the Governor and Executive Council of each of the two States approves the proposed settlement.

Attorney General Lund and Attorney General Rudman stated that each of them would immediately submit the proposed settlement of the case to his respective Governor and Executive Council with a statement of the basis for the settlement and would recommend that it be approved by them as being a fair resolution of the dispute.

The proposed settlement would place the marine boundary line in 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 along the channel range line indicated by the range lights located in



the vicinity of Pepper<sup>8</sup>ell Cove, Kittery Point, Maine, and as that channel line is marked on the Coast and Geodetic Survey Chart 211, Eighth Edition. The settlement would stipulate that this channel ends at a point which bears 195° true and a distance of 1700 yards from Whaleback Lighthouse, No. 19, USCG-158, Latitude 43°-02'-42.5" North and Longitude 70°-42'-06" West.

The settlement would also place the marine boundary line in the middle of the main channel of navigation of Gosport Harbor; it would stipulate that the middle of this channel is as marked on Coast and Geodetic Survey Chart 211, Eighth Edition, by the bottom of the *Black and White, Isles of Shoals* Bell Buoy symbol; and it would agree that this channel ends at a point which bears 350° true and a distance of 1850 yards from the Isles of Shoals Lighthouse, No. 20, USCG-158, Latitude 42°-58'-55" North and Longitude 70°-37'-39.5" West. The settlement would finally provide that the marine boundary line connecting these two agreed channel termination points is a straight line, the bearing from the Piscataqua River channel termination point towards the Gosport Harbor channel termination point being 139° true, and the reverse bearing being 319° true.

The proposed settlement involves a merging of the two main principles advocated by Counsel for the two States: the mid-channel theory advanced by Maine, and the straight line theory by New Hampshire, and an agreement as to the location of these harbor channels and their termination Points. Provision will be made for installation and maintenance of suitable markers and/or navigation aids to locate the boundary as settled, the costs of which will be shared equally by the two States, subject to any applicable federal regulations.

*supported*

*added  
to  
ours*



The proposed settlement is the product of several years of negotiation between the two States. Boundary Commissioners of the two States were appointed by their respective Governors following a resolution by the Legislature of each State in 1971. The Maine Boundary Commission Delegation consisted of Senator Richard N. Berry, Chairman, of Cape Elizabeth, Ernest F. Hoyt of Kittery, and Frederick S. Brown of Kittery. The New Hampshire Boundary Commission Delegation consisted of John R. Bradshaw, Chairman, of Nelson, Richard F. Upton of Concord, David H. Souter, Deputy Attorney General of New Hampshire, of Weare, <sup>Hon.</sup> Maurice J. Murphy, Jr., ~~of~~ <sup>of</sup> Portsmouth and Geno J. Marconi of Portsmouth.

Mr. Upton also serves as Special Counsel for New Hampshire in the pending litigation, as well as Chairman of the New Hampshire Fish and Game Commission.

When the negotiations were resumed last fall, Maine Assistant Attorneys General Charles R. Larouche and Robert J. Stolt actively assisted in the boundary negotiations. Since January <sup>1974</sup> the negotiations have been conducted principally by the Attorney General's Office of Maine and Special Counsel for New Hampshire.



JON A. LUND  
ATTORNEY GENERAL



JOHN W. BENOIT, JR.  
RICHARD S. COHEN  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04330

June 24, 1974

David H. Souter, Esquire  
Deputy Attorney General  
Attorney General's Office  
State House Annex  
Concord, New Hampshire 03301

Re: New Hampshire v. Maine

Dear Dave:

Since mailing my first letter to you this morning, I have drafted a new paragraph 11 (see draft copy attached) to the "Motion for Entry of Judgment by Consent of Plaintiff and Defendant." Please examine the language carefully and let me know of any desired change.

The line is being drawn on three copies of C & GS Chart 211, Eighth Edition, right now. I will send you two copies in a mailing tube this afternoon; one is for your office and the other should be attached to the "Motion." I will keep one for our Office.

I have assumed that the language in the "Motion" re markers, which you and Dick Upton will draft, will be about the same as you included in your draft of the News Release. I included that as Paragraph 12 with the attached draft of paragraph 11. Please examine and let me know by telephone Tuesday morning of any changes to either Paragraph 11 or 12 or the News Release, or the map.

Thanks for your cooperation.

Sincerely,

CHARLES R. LAROUCHE  
Assistant Attorney General

CRL:mfe  
enc.  
cc: Richard F. Upton, Esq.





11. 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, attached hereto.

12. Provision will be made for installation and maintenance of suitable markers and/or navigation aids to locate the boundary as settled, the costs of which will be shared equally by the two States, subject to any applicable federal regulations.



## THOMSON - CURTIS COMPACT

Resolutions Concerning Settlement of the  
Lateral Marine Boundary Dispute Between  
New Hampshire and Maine

---

Whereas there is pending in the United States Supreme Court an action brought by The State of New Hampshire against The State of Maine, entitled No. 64, Original, State of New Hampshire, plaintiff v. State of Maine, defendant, to determine and define the location of the lateral marine boundary between the two states from Portsmouth Harbor on the mainland to Gosport Harbor in the Isles of Shoals; and

Whereas the Attorney General of New Hampshire and special counsel for this State and the Attorney General of Maine have reached an agreement to recommend a proposed settlement of the dispute by means of a consent decree to be presented to the United States Supreme Court for its approval; and

Whereas the proposed settlement appears to be in the public interest and will result in substantial savings in costs of litigation as well as avoidance of the uncertainty of what the decision of the case would be if contested to final judgment;

Now therefore Be It Resolved by the Governor and Council of The State of New Hampshire as follows:

1. That the Attorney General and special counsel for this State be and they hereby are authorized to enter into a proposed consent decree, subject to the approval of the United States Supreme Court, which will contain in substance the following provisions with respect to the said lateral marine boundary:

(a) The source of the lateral marine boundary line between New Hampshire and Maine lies in the Order of the King in Council of August 5, 1749, which Order provided:



- 2 -

"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 . . . ."

(b) 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.

(c) 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.

(d) The main channel of navigation of the Piscataqua River terminates at a point which bears 195° true and a distance of 1,700 yards from Whaleback Lighthouse, (No. 19, USCG-158), at Latitude 43°-02'-42.5" North and Longitude 70°-42'-06" West.



- 3 -

(e) The middle of the main channel of navigation of Gosport Harbor is as marked on Coast and Geodetic Survey Chart 211, 8th Edition, indicated by the bottom of the Bell Buoy symbol.

(f) The main channel of navigation of Gosport Harbor terminates at a point which bears  $349.5^{\circ}$  true and a distance of 1,850 yards from the Isles of Shoals Lighthouse, (No. 20, USCG-158), at Latitude  $42^{\circ}-58'-55''$  North and Longitude  $70^{\circ}-37'-39.5''$  West.

(g) The lateral marine boundary line between New Hampshire and Maine connecting the channel termination points is a straight line.

(h) The lateral marine boundary line between New Hampshire and Maine from the termination of the Piscataqua River channel, as defined in subparagraph (d) above, proceeds toward Gosport Harbor on a bearing of  $139^{\circ}$  true.

(i) The lateral marine boundary line between New Hampshire and Maine from the termination of the Gosport Harbor channel, as defined in subparagraph (f) above, proceeds toward Piscataqua River on a bearing of  $319^{\circ}$  true.

2. That the Attorney General and special counsel be and they hereby are authorized to agree to such minor variations, if any, in the courses, distances and locations set forth in paragraph 1 above as may be disclosed to be necessary by final calculation, and to such further provisions in such proposed consent decree as may be found necessary and proper, in their opinion, to carry out the intent and purpose of this settlement and to protect the interests of this State, including (but not limited to) provision for installation and maintenance of suitable





- 4 -

markers and/or navigational aids and devices to locate the boundary as settled (consistent with federal law and regulations), the cost of which will be shared equally by the two states.

3. That the approval of the proposed settlement by the Governor and Council is conditioned upon like approval thereof by the Governor and Council of the State of Maine on or before July 15, 1974, and is given without prejudice to the rights of the State of New Hampshire in the event the Governor and Council of the State of Maine do not approve the proposed settlement or in the event the proposed settlement is disapproved by the United States Supreme Court.

In witness whereof, we, the Governor and the Executive Councilors of the State of New Hampshire, have signed these resolutions this twenty-sixth day of June, nineteen hundred and seventy-four.

William Thompson, Jr.

Lyle E. Hersom

James H. Hayes

[Signature]

[Signature]

[Signature]





STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04330

July 10, 1974

Richard F. Upton, Esquire  
Upton, Sanders & Upton  
10 Centre Street  
Concord, New Hampshire 03301

Dear Richard:

This is to inform you that the Governor and Council of Maine this morning gave their approval to our recommended resolution of New Hampshire v. Maine. Enclosed herewith is a copy of the Order of the Governor and Council reflecting their approval.

I have also enclosed a copy of Attorney General Lund's letter to the Governor and Council, dated June 20, 1974, which explains the nature of the settlement and the basis for it.

Accordingly, Maine is prepared to proceed immediately with submission of the Motion for Entry of Judgment by Consent of Plaintiff and Defendant in this case. I trust that you will expedite firming up the preliminary draft of that Motion and the Order of the Special Master that should accompany the Motion. I hope that you will be able to transmit that draft to the printer by Friday afternoon of this week, with a copy to me. I would also appreciate it if you would ask the printer to send me a copy of the proof as soon as it is ready.

I received your letter of July 9 this morning and have examined the enclosed revision of the last page, and I concur in that revision.

I would suggest another modification to the preliminary draft of the Motion, as follows:

On page 2, <sup>IN</sup> of the first numbered paragraph, insert between the word "to" and the words "the inner Gosport Harbor" the following words - "the break-water at the end of."



Richard F. Upton, Esquire

-2-

July 10, 1974

I also concur in your suggested modification of the first paragraph at the top of page 2, to have the phrase "each such Governor and each such Executive Councillor" changed to read "the Governor and Council of each State."

I understand that you find that the map showing the black line on chart 211 with the words Maine and New Hampshire above and below that line is satisfactory to you.

I am continuing to double check with experts in geography and cartography, etc. our description of this boundary line and hope to firm it up to my satisfaction no later than tomorrow (Thursday, July 11), and I trust that you will do likewise, to your own satisfaction. I will in any event advise you of my findings no later than Friday morning, July 12. Present indications are that there will be no change whatever in the method of description.

Also enclosed herewith please find a copy of a letter to Mr. Justice Clark, which I sent today to him, and a copy to David Souter.

Yours truly,

CHARLES R. LAROCHE  
Assistant Attorney General

CRL:mfe

encs.





STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04330

July 10, 1974

The Honorable Tom C. Clark  
Justice, Supreme Court of the  
United States (Retired)  
Chambers, United States Supreme Court  
Washington, D.C. 20543

Re: No. 64, Original - State of New Hampshire vs. State of Maine

Dear Mr. Justice Clark

I have the honor to inform you that counsel for the State of New Hampshire and the State of Maine have reached agreement for settlement of the marine boundary line dispute in the reference case. Counsel have agreed to submit to the Supreme Court of the United States a "Motion for Entry of Judgment By Consent of Plaintiff and Defendant," which would specify the precise marine boundary line provided the Governor and Council of each of the two states approve the proposed settlement. This morning the Governor and Executive Council of Maine approved the recommendation of the Attorney General of Maine for settlement of this action in this manner. Counsel of New Hampshire have informed me that the Governor and Council of New Hampshire approved this proposed settlement two weeks ago.

Mr. Upton and I are in the process of firming up a joint Motion for submission to you in the near future.

In view of this development, it would seem that there is now no need for further pretrial submissions, as specified in your Pretrial Order of April 29, 1974.

In any event, you will hear from us further not later than the end of July.

Trusting that the foregoing is satisfactory to you, I am

Most respectfully yours,

CHARLES R. LAROCHE  
Assistant Attorney General

cc: ~~DAVID H. SOUTER~~  
David H. Souter, Esquire  
Richard F. Upton, Esquire





# State of Maine

JUL 10 1974

In Council,

Department, Attorney General

## ORDERED,

That the proposed settlement of the case of New Hampshire v. Maine, No. 64, Original, Supreme Court of the United States, October Term, 1972, by "Motion for Entry of Judgment by Consent of Plaintiff and Defendant," which Motion would specify the lateral, marine boundary line between New Hampshire and Maine from the inner Portsmouth Harbor to the inner Gosport Harbor in substantially the manner described in the attached preliminary draft copy of that Motion, is approved by the Governor and Executive Council.

### Statement of Facts

A letter from the Attorney General to the Governor and Council, stating the basis for the proposed settlement, and recommending that it be approved by the Governor and Council as being a fair resolution of the dispute, is attached hereto.

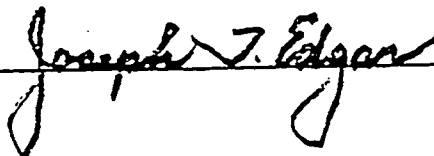
A copy of the Memorandum of Meeting of May 30, 1974, by the Maine-New Hampshire Boundary Commission, Maine Section, commenting on the proposed settlement, is also attached hereto.

Also enclosed herewith is a copy of a portion of C & G S Chart 211, showing the boundary line placed on its maps since 1916-17 by the U.S. Geological Survey, which is shown by a heavy black dashed line; also on this map is the New Hampshire "Lights in Range Line," which is shown by a solid green line; and also shown on this map is the proposed boundary settlement line, shown by a solid red line.

For the further information of the Governor and Council, there is enclosed herewith a copy of New Hampshire's Complaint, with Appendix map, and Maine's Answer thereto.



Read and passed by the Council, and by the Governor approved.

 Secretary of State.

7039 JUL 10 1974





STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04330

June 20, 1974

Honorable Kenneth M. Curtis  
Governor of Maine  
State House  
Augusta, Maine 04330

Honorable Harvey Johnson  
Chairman, Executive Council  
Executive Department  
State House  
Augusta, Maine

Re: State of New Hampshire v. State of Maine

Gentlemen:

I have the honor to transmit to you herewith a draft Council Order, with explanatory papers attached thereto, and described in the Order, concerning the New Hampshire v. Maine, No. 64 Original, Supreme Court of the United States, October Term, 1972, case.

Counsel for the two States have reached a tentative agreement for settlement of the marine boundary line dispute involved in this case. Counsel have agreed to submit to the Supreme Court of the United States a "Motion for Entry of Judgment by Consent of Plaintiff and Defendant," which would specify the precise marine boundary line, provided the Governor and Executive Council of each of the two States approve the proposed settlement.

The proposed settlement would place the marine boundary line in 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 along the channel range line indicated by the range lights located in the vicinity of Pepperell Cove, Kittery Point, Maine, and as that channel line is marked on the Coast and Geodetic Survey Chart 211, Eighth Edition. The settlement would stipulate that this channel ends at a point which bears 195° true and a distance of 1700 yards from Whaleback Lighthouse, No. 19,



Honorable Kenneth M. Curtis

Honorable Harvey Johnson

Page 2

June 20, 1974

USCG-158 Latitude 43°-02'-42.5" North and Longitude 70°-42'-06" West.

The settlement would also place the marine boundary line in the middle of the main channel of navigation of Gosport Harbor; it would stipulate that the middle of this channel is as marked on Coast and Geodetic Survey Chart 211, Eighth Edition, by the bottom of the Bell Buoy symbol; and it would agree that this channel ends at a point which bears 349½° true and a distance of 1850 yards from the Isles of Shoals Lighthouse, No. 20, USCG-158 Latitude 42°-53'55" North and Longitude 70°-37'-39.5" West.

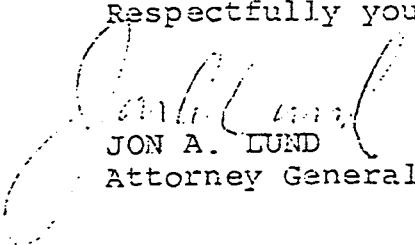
The settlement would finally provide that the marine boundary line connecting these two agreed channel termination points is a straight line, the bearing from the Piscataqua River channel termination point towards the Gosport Harbor channel termination point being 139° true, and the reverse bearing being 319° true.

The proposed settlement involves a merging of the two main principles advocated by Counsel for the two States: the mid-channel theory advanced by Maine, and the straight line theory by New Hampshire, and an agreement as to the location of these harbor channels and their termination points.

The proposed settlement is the product of several years of negotiation between the two States. Several of my Assistants have conducted intensive factual, historical and legal research in connection with this litigation during the past year. It is their opinion and mine that the proposed settlement is a fair resolution of this dispute and that disposition of this action in this manner would be in the best interest of this State.

Accordingly, I respectfully request that you indicate your approval of my proposed action in this case.

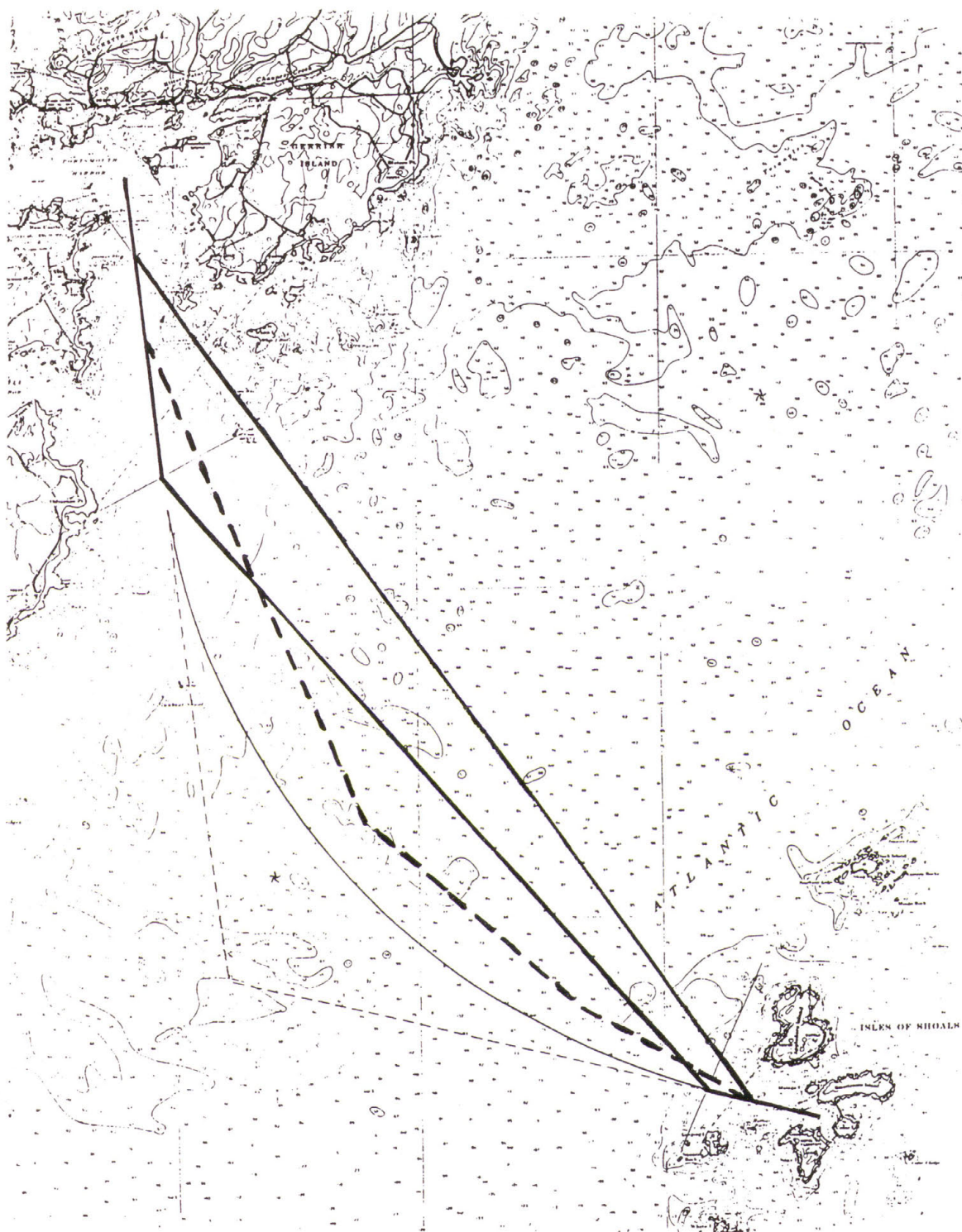
Respectfully yours,

  
JON A. LUND  
Attorney General

JAL:mfe

cc: Honorable Richard W. Logan  
Honorable Hattie M. Bickmore  
Honorable Howard W. Mayo  
Honorable Harold G. Clark  
Honorable Clyde A. Hichborn  
Honorable Herald J. Beckett









IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1972

---

NO. 64, ORIGINAL

---

THE STATE OF NEW HAMPSHIRE, Plaintiff

v.

THE STATE OF MAINE, Defendant

BRIEF IN OPPOSITION  
TO MOTION TO INTERVENE

JON A. LUND  
Attorney General

CHARLES R. LAROCHE  
Assistant Attorney General  
Office of the Attorney General  
State House, Augusta, Maine 04330  
Counsel for Defendant The State  
of Maine

ROBERT J. STOLT  
Assistant Attorney General  
  
Of Counsel



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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1972

---

NO. 64, ORIGINAL

---

THE STATE OF NEW HAMPSHIRE, Plaintiff

v.

THE STATE OF MAINE, Defendant

---

BRIEF IN OPPOSITION TO  
MOTION TO INTERVENE

---

Maine opposes the Motion to Intervene on the following grounds:

1. Such intervention by citizens of New Hampshire would constitute prosecution of a suit against the State of Maine by the citizens of another state, in contravention of Amendment 11, Constitution of the United States.
2. The movants have no private interest in the property or transaction which is the subject of the action.
3. Any interest which the movants may have in this action is properly represented by the State of New Hampshire.

STATEMENT

This action was commenced by New Hampshire against Maine on June 6, 1973, by docketing with the Clerk of this Court a Motion for Leave to File Complaint. Subsequently, New Hampshire filed a Motion for Preliminary Injunction. Maine opposed both motions.





The Motion for Preliminary Injunction was denied, the Motion for Leave to File Complaint was granted and a Special Master was appointed. On April 1, 1974, Maine filed its Answer.

On September 23, 1974, Counsel for the two states filed a Motion for Entry of Judgment by Consent of Plaintiff and Defendant. Counsel therein represented to the Court that after long and careful study they had come to agreement as to the pertinent facts and the applicable legal principles determinative of this action, and that the proposed judgment was in the best interest of each State. Counsel also represented to the Court that, after full explanation, the Governor and Executive Council of each State concurred in that conclusion. The Motion to Intervene contains nothing contrary to anything in the foregoing Statement.

Movants represent that they claim reasonably and in good faith that the true boundary line is the "lights in range" line. Motion to Intervene, p. 19. They fault the Attorney General and Deputy Attorney General of New Hampshire, as well as Special Counsel for New Hampshire, for refusing actively to present to this Court such claim. Id. On the other hand, movants have submitted no proposed pleading incorporating this claim. Instead, movants have offered to adopt the Complaint already filed by Counsel for New Hampshire (Motion to Intervene, p. 21), which Complaint does not include a claim of the "lights in range" line.

#### ARGUMENT

##### I.

#### THE ELEVENTH AMENDMENT BARS THE PROPOSED INTERVENTION

The jurisdiction of this Court has been invoked by New Hampshire under Article III, Section 2, Clause 2, Constitution of the United States, which provides:



"In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the Supreme Court shall have original Jurisdiction."

In Chisholm v. Georgia, 2 Dall., 419 (1792), the Court sustained its jurisdiction to entertain an action brought against Georgia by a citizen of another state. Because of that decision,<sup>1/</sup> Amendment 11, Constitution of the United States, was adopted, which reads:

"The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

This Amendment prohibits the extension of the Court's Article III, Section 2, Clause 2, original jurisdiction to an action against a State by citizens of another State. Hollingsworth v. Virginia, 3 Dall. 378 (1798).

While it is clear that the sovereign State of New Hampshire has authority to commence and prosecute this action, it is equally clear that the sovereign State of Maine is entitled, under the Eleventh Amendment, to be free of actions which are either "commenced or prosecuted" by citizens of another State, including movants. Maine objects to movants' request to be allowed to take part in the prosecution of this action.

No case cited by movants supports the proposition that a citizen of another State can, through intervention, prosecute a suit against one of the United States over the objection of that State.<sup>2/</sup> There

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1/ See Hollingsworth v. Virginia, 3 Dall. 378 (1798); Hans v. Louisiana, 134 U.S. 1, 10-11, 14-16 (1890)..

2/ Movants cite Florida v. Georgia, 17 How. 478 (1855); but that case involved the Attorney General of the United States intervening in his capacity as the Attorney General, representing the special interests of the United States. Movants also cite Oklahoma v. Texas, 253 U.S. 465 (1920) and Oklahoma v. Texas, 254 U.S. 609 (1920). However, the individuals in those cases were simply claimants before the United States Receiver. See Oklahoma v. Texas, 252 U.S. 372 (1920).



is no such authority. The Eleventh Amendment plainly precludes it.

## II.

### MOVANTS HAVE NO PRIVATE INTEREST IN THE PROPERTY OR TRANSACTION WHICH IS THE SUBJECT OF THIS ACTION.

Movants contend that they are entitled to intervene as of right under Rule 24(a)(2), F.R.Civ.P. Pretermitted the Eleventh Amendment bar, and assuming arguendo <sup>3/</sup> the applicability of that Rule to the instant action, we submit that movants fail to meet the first criteria for such entitlement under that Rule. Movants have no private "interest relating to the property or transaction which is the subject of the action. . . ."

The only property involved in this action is that which lies beneath the water in the disputed area. None of the movants claim to have any proprietary interest therein. While they do claim to have a license to fish, such license is simply a privilege, creating no proprietary interest. LeClair v. Swift, D. Wis. 76 F. Supp. 729 (1948); Coggeshall v. Harbor Comm., 146 A. 482, 50 R.I. 175 (1929).

The "transaction" which is the subject of this action is the determination of the lateral marine boundary between these two States in the area between inner Portsmouth Harbor and the breakwater at the end of Gosport Harbor. The individual citizen does not have

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3/ The Court has said that its Rule 9(2) refers to the Rules of Civil Procedure as a guide only where their application is appropriate. It has indicated that the federal rules of intervention are inappropriate. Intervention denied in Utah v. United States, 394 U.S. 89, 95 (1969) saying that its jurisdiction was to be invoked sparingly. Kentucky v. Indiana, 281 U.S. 163, 173, 174 (1930), denied citizens the right to litigate a contract between two states, because the state "must be deemed to represent all its citizens." New Jersey v. New York, 345 U.S. 369, 372, 373 (1953), intervention by Philadelphia denied, avoiding the Eleventh Amendment question, because "our original jurisdiction should not be thus expanded to the dimensions of ordinary class actions." It then stated a special rule:

"An intervenor whose state is already a party should have the burden of showing some compelling interest, in his own right, apart from his interest in a class with all other citizens and creatures of the state, which interest is not properly represented by the state." At 373.

Movants patently fail all parts of this test.



private interest in such a transaction. The determination of a boundary line between States involves a public matter relating to State sovereignty, jurisdiction and dominion. When such a matter is before this Court, it presents a judicial question. Rhode Island v. Massachusetts, 12 Pet. 657 (1838); Florida v. Georgia, 17 How. 478 (1855). The movants here are all acting in their private capacity as citizens of New Hampshire. They "have no separate individual right to contest in such a suit the position taken by the State itself." Kentucky v. Indiana, 281 U.S. 163, 173 (1930).

Accordingly, it is clear that the movants do not have a private "interest in the transaction which is the subject of the action," within the meaning of Rule 24(a)(2), F.R.Civ.P.

### III.

#### ANY INTEREST WHICH MOVANTS MAY HAVE IN THIS ACTION IS PROPERLY REPRESENTED BY THE STATE OF NEW HAMPSHIRE.

It appears from the pleadings and pretrial memoranda in this action that the Attorney General and Deputy Attorney General of New Hampshire and the Special Counsel for New Hampshire have been actively pursuing the best interests of New Hampshire concerning the determination of the lateral marine boundary between New Hampshire and Maine for the past four years. It also appears from those papers that they have earnestly sought to obtain the most favorable determination of that issue which the pertinent facts and applicable legal principles would permit.

Therefore, whatever interests movants may have in the subject of this action, they are properly represented by the State of New Hampshire. This conclusion is not altered by anything in the Motion to Intervene. That Motion contains three allegations of error. First, movants say that the proposed method of resolving this controversy by a Motion for Entry of Judgment by Consent of Plaintiff and Defendant, is procedurally improper. However, we submit that this





procedure is clearly proper and we are confident that Counsel for New Hampshire will fully dispose of this meritless contention in a Brief which he will submit on that issue to the Special Master.

The second allegation of error contained in the Motion to Intervene is that the proposed boundary would make it "necessary for petitioners to traverse Maine waters in order to reach their ports on the New Hampshire mainland." Motion to Intervene, p. 5. We submit that examination of either the language in the proposed judgment (see paragraph 4, p. 2, Motion for Entry of Judgment by Consent of Plaintiff and Defendant), or the map which was filed with it, will clearly reveal that this allegation is false. Since the boundary follows the middle of the main channel of navigation into Portsmouth Harbor, the citizens of each State will have equal access into that harbor and none of them will have to traverse waters of the other State.

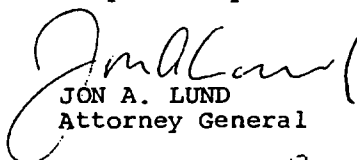
The third allegation of error in the Motion to Intervene is that the "lights in range" line is the true boundary line. However, while faulting Counsel for New Hampshire for not advancing that claim, movants simultaneously abandon that claim by choosing, without explanation, not to present a Complaint alleging it, but, instead, offering to adopt for themselves the Complaint filed by the State of New Hampshire, which Complaint does not include that claim. Such hollow allegations, spurious fault-finding and self-contradiction would seem to justify the conclusion that this Motion to Intervene is frivolous.




CONCLUSION

WHEREFORE, Maine respectfully submits that the Motion to Intervene is patently meritless and that it should be summarily denied.

Respectfully submitted,



JON A. LUND  
Attorney General



CHARLES R. LAROCHE  
Assistant Attorney General  
Counsel for State of Maine

ROBERT J. STOLT  
Assistant Attorney General

Of Counsel

October 11, 1974.



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

PLAINTIFF'S BRIEF IN OPPOSITION  
TO MOTION TO INTERVENE

WARREN RUDMAN  
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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

PLAINTIFF'S BRIEF IN OPPOSITION  
TO MOTION TO INTERVENE

Plaintiff, The State of New Hampshire, opposes the Motion to Intervene on the following grounds:

1. Such intervention, if permitted, would in effect constitute the prosecution of a suit against The State of New Hampshire without its consent, and such a suit is barred under the doctrine of sovereign immunity.

2. The petitioners have no private property interests in the taking of fish and lobsters in the disputed area; their interest is no greater than that of any member of the general public of New Hampshire.

3. Any interest which the petitioners may have is represented by the plaintiff, The State of New Hampshire, and petitioners have not shown just cause for intervention.



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INTRODUCTORY STATEMENT

The present action was commenced on June 6, 1973, invoking the original jurisdiction of the Supreme Court. On October 9, 1973, the Supreme Court granted leave to file the complaint. Subsequently, the defendant, The State of Maine, filed an answer and general denial, joining issue with the complaint. The case was assigned to a Special Master for trial and report (414 U.S. 996).

On April 25, 1974, the Special Master conducted a pretrial conference at Boston at which plans for the trial were discussed and finalized, rules of procedure were settled, and recommendations were made by the Special Master to counsel that the parties should endeavor to reach a settlement. Negotiations were then entered into by counsel, and on June 26, 1974, at a regular meeting of the Governor and Council of New Hampshire, a proposed settlement agreement was publicly announced as having been agreed to by the Attorneys General of each state. This settlement agreement was approved by the Governor and Council of New Hampshire and subsequently by the Governor and Council of Maine.

Many of the persons who are now petitioners in the Motion to Intervene, during the months of July, August and September, 1974, made repeated requests to the Attorney General of New Hampshire and to the Governor of New Hampshire that they reconsider the proposed settlement agreement. Pursuant to such requests for reconsideration, numerous meetings were held, both by the Attorney General, his Deputy, and



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Special Counsel, and by the Governor of New Hampshire, with these persons, at which they were given full opportunity to present evidence and arguments as to why the proposed settlement agreement should be reconsidered. As a result of all these various meetings and presentations, it was determined that these petitioners had failed to show just cause for the plaintiff to request a reopening of the proposed settlement agreement. Under date of September 9, 1974, present counsel for the petitioners submitted a written offer of proof in support of the above requests for reconsideration. After full consideration, on September 16, 1974, the New Hampshire Attorney General and Special Counsel and the Governor of New Hampshire determined that no just cause existed for further delay, and on September 23, 1974, the Motion for Entry of Judgment by Consent of Plaintiff and Defendant, duly executed by the Attorneys General of Maine and New Hampshire, was filed with the Special Master. Subsequently, the pending petition for leave to intervene was filed in this Court, and it was, on October 15, 1974, referred to the Special Master.

During the numerous conferences held with petitioners, referred to in the preceding paragraph, one of the claims advanced was to the effect that the boundary line proposed in the Motion for Entry of Judgment by Consent would make it impossible for New Hampshire fishermen to reach New Hampshire docks in Piscataqua Harbor without first crossing the boundary line into Maine. These petitioners were invited to show how this claim could possibly be true, but, at all these conferences,





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no substantiation was presented to support this claim. As a matter of fact, the proposed boundary line as it leaves Piscataqua Harbor follows the center of the channel of navigation. Thus, New Hampshire fishermen and Maine fishermen have equal opportunity to enter the Harbor on their respective sides of the proposed state line. An examination of the official map filed with the Motion for Entry of Judgment by Consent shows that there is ample opportunity for New Hampshire fishermen to enter the Harbor on the New Hampshire side of the proposed state line.

I. SUCH INTERVENTION, IF PERMITTED, WOULD IN EFFECT CONSTITUTE THE PROSECUTION OF A SUIT AGAINST THE STATE OF NEW HAMPSHIRE WITHOUT ITS CONSENT, AND SUCH A SUIT IS BARRED UNDER THE DOCTRINE OF SOVEREIGN IMMUNITY.

A state may not be sued in its own courts by its own citizens unless it consents to such action. This is the familiar doctrine of sovereign immunity. Rothrock v. Loon Island, 96 N.H. 421.

The federal courts have uniformly applied the same rule in cases coming before them. See Principality of Monaco v. Mississippi, 292 U.S. 313; Hans v. Louisiana, 134 U.S. 1; Duhne v. New Jersey, 251 U.S. 311. The last-mentioned case is particularly significant since it involved an effort to invoke the original jurisdiction of the Supreme Court.



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The petition for leave to intervene is definitely an effort to institute litigation against The State of New Hampshire. The petitioners seek to have set aside the Motion for Entry of Judgment by Consent which has been duly executed on behalf of The State of New Hampshire by its Attorney General. The petitioners seek to advocate a position in this case contrary to that taken by the Attorney General on behalf of The State of New Hampshire. The petition to intervene involves public property rights in the waters and bed of the ocean within the 3-mile limit which belong to The State of New Hampshire (43 U.S.C. s. 1311). As stated in 81 C.J.S. 1320 (States, section 216(c)):

"A suit, involving property in which the state has an undoubted right or interest, and in which no effective decree can be rendered without binding the state itself, is a suit against the state and cannot be maintained without its consent."

See also Christian v. Atlantic & No. Car. R.Co., 133 U.S. 233.

It is well settled that the question whether a particular suit is one against a state is not to be determined solely by reference to the line-up of the parties of record. Whether a particular action is against the state is to be determined by the essential nature and effect of the proceeding. Judged in this light, the claims advanced by the petitioners are clearly contrary to the position taken by The State of New Hampshire by its Attorney General. The relief sought by the petitioners will inevitably be contrary to the relief proposed by the Attorney General on behalf of the State in the Motion for Entry of Judgment by Consent,



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which he has found to be in the public interest. In the case of St. Regis Paper Co. v. Water Resources Board, 92 N.H. 164 at 168, in a somewhat analogous situation, the New Hampshire Supreme Court said:

"It is said in Blanchard v. Railroad, 86 N.H. 263, 265: 'When the state, by those having its authority, takes either a positive or neutral position in respect to the public interest, it determines what the claim of public interest is.' In the case here the Attorney-General has taken a position of neutrality in behalf of the State, and this determination of his duty, exercised in good faith is not subject to judicial appeal or review at the demand of individuals. Since the State cannot be sued directly or indirectly without its consent (Western Union &c. Co. v. State, 64 N.H. 265, 271; Bow v. Plummer, 79 N.H. 23, 24; Conway v. Board, 89 N.H. 346, 348), and since it has here given no consent, except to permit suit against the Water Resources Board as its agency, the plaintiff's right to have the Attorney-General joined as a party must be denied."

II. THE PETITIONERS HAVE NO PRIVATE PROPERTY INTERESTS IN THE TAKING OF FISH AND LOBSTERS IN THE DISPUTED AREA: THEIR INTEREST IS NO GREATER THAN THAT OF ANY MEMBER OF THE GENERAL PUBLIC OF NEW HAMPSHIRE.

By chapter 29, Title 43, United States Code, "Submerged Lands", the Congress vested title in the seacoast states to their offshore submerged lands within the 3-mile limit and to the "natural resources" within such lands and waters. (43 U.S.Code, Section 1311) Section 1301(e) defines "natural resources" to include "fish and lobsters".



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The complaint and answer establish that, in this case, the area in dispute between the two states is entirely within the 3-mile belt of territorial waters, giving effect to the usual rule that offshore islands are entitled to their own separate 3-mile belt of territorial waters.

Under New Hampshire law, the taking of fish in public waters (subject to state licensing requirements), is a public or common right, not a private right. Under New Hampshire law, fish in public waters belong to the public generally, and no person has any private property interest in the same until lawfully reduced to possession. State v. Roberts, 59 N.H. 484. Or, as stated in State v. Dow, 78 N.H. 286, " \* \* \* the individual has no vested right in fish and wild game not reduced to possession."

In Percy Summer Club v. Astle (1908) 163 Fed 1, the First Circuit Court of Appeals, after a long review of New Hampshire decisions held that fishing in public waters in New Hampshire is free to the general public and that a private club owning all the land on the shore of public waters had no exclusive, private rights of fishing therein.

In the case of St. Regis Paper Co. v. Water Resources Board, 92 N.H. 164 at 170, the New Hampshire Supreme Court, in dealing with public rights in public waters, made the following declaration as to New Hampshire law:





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"Since the public right is not a private one, it follows that individual members of the public entitled to enjoy the right enjoy the right in a personal capacity only derivatively. Their rights are not property rights and are not vested. Strictly, the rights are more properly to be termed privileges, which may be taken away, altered or qualified."

The case of Whitcher v. State, 87 N.H. 405, cited by the petitioners is not contrary to this position, because fishing in public waters is referred to at page 407 of the opinion as a "public right". Since the taking of fish and lobsters in public waters is not a private property right, but rather is a common privilege which the petitioners, if properly licensed, enjoy only as members of the general public, the petitioners are not entitled in this case to take a position contrary to that officially taken by The State of New Hampshire in this litigation. The State is entitled to represent all members of the public where only public rights and privileges are involved, as here.

Those petitioners who are legislators stand in no stronger position either. They base their claim to intervene on the allegation that the legislature of New Hampshire is the only body which may approve the proposed settlement on behalf of the State. The stipulation of the respective Attorneys General for entry of a consent decree in this action is treated by them as if it were an interstate compact, requiring the approval not only of the New Hampshire legislature but also of the United States Congress.



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It is our position that this claim advanced on behalf of the petitioning legislators entirely misconceives the situation here presented and is unfounded as a matter of law. These petitioners should not be permitted to intervene if it appears on the face of their petition that their claims are not well founded in law. The position of the New Hampshire legislators fails to distinguish between settlement of a boundary by legislative proceedings (i.e., the interstate compact process) and by judicial action (i.e., the original jurisdiction of the Supreme Court).

The two states did attempt to settle this boundary dispute by the legislative process, by the creation of boundary commissions containing representatives of each state. The plan was that the two sets of commissioners would make an interstate compact if possible, settling the boundary, which would then be submitted to the Congress for ratification under the compact clause, after having first been approved by the legislatures of each state. See ch. 429, N. H. Session Laws of 1971 and ch. 131, Maine Session Laws of 1971. However, after protracted negotiations, the boundary commissioners were unable to agree and there seemed no prospect that there would be an agreement. The "fishing politics" of each state made it extremely difficult for either side to compromise.

Then there were the border incidents resulting in arrests and threats of retaliation, and this situation led the Attorney General of New Hampshire to institute the present action in the United States



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Supreme Court, believing that the interstate compact process had broken down and failed and that it was now time to seek judicial relief. The Supreme Court granted leave to file this action, in effect holding that a justiciable controversy existed. (See order of Oct. 9, 1973 in 38 L.Ed. (2) 45)

At the pretrial conference conducted by the Special Master in Boston in April of this year, it was strongly recommended to counsel that efforts to effect a compromise be redoubled. We were able to come to an agreement because the respective Attorneys General and their assistants and Special Counsel were perhaps more objective and less politically motivated and were trying to see the case as lawyers would see it, based on the strengths and weaknesses of the evidence and the probable law which would be applied.

Every court which has jurisdiction has the undoubted power to promote a settlement and approve it and make it a decree. This is an inherent power of every judicial body, if it be granted that there is jurisdiction over the subject matter and the parties. Otherwise, the parties would be forced into an adversary position when the respective Attorneys General of the two states thought that a settlement of their pre-existing differences was reasonable and in the public interest.

The case of Florida v. Georgia, 58 U.S. 478, seems to imply that the two states could come to an understanding in a boundary case before the United States Supreme Court without legislative or Congressional



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consent, because there it is held that the Attorney General of the United States has a right to intervene to represent the federal interest in such a case.

Parenthetically, in the present case, the parties have notified the Department of Justice and have sent it a copy of the motion for consent decree. The certificate of notice to the Department of Justice has been filed for the record.

It is difficult to believe that an agreement for settlement between the respective Attorneys General in a case over which the Supreme Court has jurisdiction is an interstate compact requiring the approval of the state legislatures and the Congress, for, so to hold, would seem to be a derogation of the inherent power of the Supreme Court as a judicial body and to involve the state legislatures and the Congress in a judicial matter, outside their allotted spheres. See Rhode Island v. Massachusetts, 12 Peters 657.

It is the policy of the law to favor the settlement of litigation and to give sanction and legal effect to such settlements where they are found to be reasonable and appropriate. The Supreme Court has this power, as well as any other Court. Otherwise, it would be deprived of one of the most useful parts of the judicial power.

The motion for entry of the consent decree has been stipulated to, by the Attorneys General of each state. As to the undoubted power of the Attorney General of a state to take such action, see annotation:





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"Power of attorney general to settle and compromise or dismiss suit or proceeding" 81 ALR 124. See also State v. Swift, 101 N.H. 340, and Utah v. United States, 394 U.S. 89 and 94, 95. Here, the further precaution was taken to obtain approval of the settlement by the governor and executive council of each state who head the executive branch and may speak for all state departments and agencies.

The proposed marine boundary is not something "pulled out of thin air" and unsupported by law or evidence. If the Special Master should decide to hold a hearing on the motion for entry of consent judgment, we are prepared to show, if desired by the Court, that the proposed boundary line set forth in the motion is not an arbitrary line, but rather is a line supported by applicable principles of law and substantial evidence.

For example, the selection of the middle of the navigable channel as the proposed boundary at the respective harbor mouths follows New Jersey v. Delaware, 291 U. S. 361, which involved a situation much similar. The selection of a straight line as the boundary connecting the two channel termination points is consistent with the "special circumstances" exception to Article 12 of the Convention on the Territorial Sea and Contiguous Zone. (15 U.S. Treaties, 1608 (1958)), and the location offshore of the Isles of Shoals which were divided between the two states in their colonial grants or charters.



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III. ANY INTEREST WHICH THE PETITIONERS MAY HAVE IS REPRESENTED BY THE PLAINTIFF, THE STATE OF NEW HAMPSHIRE, AND PETITIONERS HAVE NOT SHOWN JUST CAUSE FOR INTERVENTION.

The petitioners have cited only one case involving the original jurisdiction of the Supreme Court in which individual citizens were permitted to intervene in a boundary case, Oklahoma v. Texas, 253 U. S. 465, 470; 254 U. S. 609. That case is clearly distinguishable in that the individuals involved were property owners whose property had been seized by a United States Receiver appointed by the Supreme Court to hold such property pending the decision of the boundary dispute. Such individuals were permitted to intervene, it seems, solely to protect their property interests before the Receiver, and it does not appear that such intervention was opposed by either state.

In at least three cases involving the original jurisdiction of the Supreme Court, individual citizens and corporations have been denied permission to intervene in an action between states.

In the case of Kentucky v. Indiana, 281 U. S. 163 at 173-175, intervention was denied, the Court saying:

"A state suing, or sued, in this court, by virtue of the original jurisdiction over controversies between states, must be deemed to represent all its citizens. The appropriate appearance here of a state by its proper officers, either as complainant or defendant, is conclusive upon this point. Citizens, voters and taxpayers, merely as such, of either state, without a showing of any further and proper interest, have no separate individual right to contest in such a suit the position taken by the



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state itself. Otherwise, all the citizens of both states, as one citizen, voter and taxpayer has as much right as another in this respect, would be entitled to be heard. \* \* \*

"In the present instance, there is no showing that the individual defendants have any interest whatever with respect to the contract and its performance other than that of the citizens and taxpayers, generally, of Indiana, an interest which that state in this suit fully represents."

Similarly, in the case of New Jersey v. New York, 345 U. S.

369, the Court denied the City of Philadelphia permission to intervene, saying:

"The 'parens patriae' doctrine however, has aspects which go beyond mere restatement of the Eleventh Amendment; it is a recognition of the principle that the state, when a party to a suit involving a matter of sovereign interest, 'must be deemed to represent all its citizens.' Kentucky v. Indiana, 281 US 163, 173, 174, 74 L ed 784, 797, 50 S Ct 275 (1930). The principle is a necessary recognition of sovereign dignity, as well as a working rule for good judicial administration. Otherwise, a state might be judicially impeached on matters of policy by its own subjects, and there would be no practical limitation on the number of citizens, as such, who would be entitled to be made parties. \* \* \*

"Our original jurisdiction should not be thus expanded to the dimensions of ordinary class actions. An intervenor whose state is already a party should have the burden of showing some compelling interest in his own right, apart from his interest in a class with all other citizens and creatures of the state, which interest is not properly represented by the state. See Kentucky v. Indiana (US) supra. Philadelphia has not met that burden and, therefore, even if her intervention would not amount to a suit against a state within the proscription of the Eleventh Amendment (and we do not intend to give any basis for implying that it does) leave to intervene must be denied."



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In Utah v. U. S., 394 U. S. 89, this Court denied a petition to intervene filed by a corporate landowner, holding:

"While we can perceive no compelling reason requiring the presence of Morton in this lawsuit, there are substantial reasons for denying intervention. If Morton is admitted, fairness would require the admission of any of the other 120 private landowners who wish to quiet their title to portions of the relited lands, greatly increasing the complexity of this litigation. Moreover, if any private landlord who is a citizen of Utah should seek to intervene, we would be required to decide the difficult constitutional question as to whether this Court may retain its original jurisdiction over an action in which complete diversity of citizenship no longer exists between the contesting parties."

The plaintiff has previously given painstaking consideration to the claims advanced by the petitioners that they have new evidence or new law which would warrant reconsideration by the plaintiff of its position in this case. As before related, numerous sessions have been held with a large number of the petitioners and their counsel, and every opportunity has been given them to show cause why the proposed consent decree should not be favored by the plaintiff. It is the considered judgment of the Attorney General of New Hampshire, supported by the Governor of New Hampshire, that these petitioners have failed to sustain their claims and that the public interest requires that the plaintiff continue to adhere to the proposed consent





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decree. We believe that no element of public interest or justice would be served by permitting these petitioners to intervene.

Respectfully submitted,

The State of New Hampshire  
Warren Rudman  
Attorney General

David Souter  
Deputy Attorney General

By /s/ Richard F. Upton  
Special Counsel



-----x  
STATE OF NEW HAMPSHIRE,

Plaintiff,

v.

STATE OF MAINE,

Defendant.  
-----x

No. 64 Orig.

Washington, D. C.

Monday, April 19, 1976

The above-entitled matter came on for argument at  
10:04 a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States  
WILLIAM J. BRENNAN, JR., Associate Justice  
POTTER STEWART, Associate Justice  
BYRON R. WHITE, Associate Justice  
THURGOOD MARSHALL, Associate Justice  
HARRY A. BLACKMUN, Associate Justice  
LEWIS F. POWELL, JR., Associate Justice  
WILLIAM H. REMQUIST, Associate Justice  
JOHN P. STEVENS, Associate Justice

APPEARANCES:

EDWARD F. BRADLEY, JR., ESQ., Assistant Attorney  
General, State House, Augusta, Maine 04333, for  
the defendant.

RICHARD F. UPTON, ESQ., Special Counsel, 10 Centre  
Street, Concord, New Hampshire 03301, for the  
plaintiff.



I N D E X

## ORAL ARGUMENT OF:

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EDWARD F. BRADLEY, JR., ESQ., for the defendant

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RICHARD F. UPTON, ESQ., for the plaintiff

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## REBUTTAL ARGUMENT OF:

EDWARD F. BRADLEY, JR., ESQ.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments first this morning in No. 64 Original, State of New Hampshire against the State of Maine.

Mr. Bradley, you may proceed whenever you are ready.

ORAL ARGUMENT OF EDWARD F. BRADLEY, JR.,

ON BEHALF OF DEFENDANT

MR. BRADLEY: Mr. Chief Justice, and may it please the Court: This is a dispute between the States of Maine and New Hampshire over the location of their lateral marine boundary in the Piscataqua River and Gosport Harbor and the intervening marine area.

The legal issue in this case is the proper interpretation of the 1740 boundary decree of the King of England which describes the boundary in these areas. Maine's original interpretation of the decree was an extended thalweg line in Piscataqua Harbor and Gosport Harbor intersecting in the intervening marine areas.

New Hampshire's original line is a "lights on range" line connecting Fort Point to Whaleback Light. It was Maine's enforcement of its lobster regulations in the intervening marine area between these two lines which led to regulatory conflict and an attempt to resolve the boundary through boundary commissions. This attempt failed. Subsequent enforcement action led to conflict between enforcement officers of both





States and an executive moratorium on enforcement to permit New Hampshire to file a complaint in this case.

New Hampshire filed that complaint on June 6, 1973, and a Master, Justice Thomas Clark, was appointed on November 5, 1973. Soon after his appointment Justice Clark met with counsel for Maine and New Hampshire to urge the States to settle this dispute and to avoid long and disruptive litigation with great expense to the people of both States.

Counsel accepted this recommendation and met to review principles of law which would determine the location of the boundary and the proper interpretation of the description in the 1740 decree. They were able to reach agreement on this and they filed a joint motion for consent decree on September 1, 1975. On February 27, 1975, the stipulated record in support of that joint motion for consent was submitted to the Special Master and the case was finally submitted without oral argument on March 17, 1975.

After reviewing the stipulated record and the consent decree submitted by the States, the Special Master decided that he had to reject the consent decree because he believed that the court was without jurisdiction to enter and also because he felt the geographic middle rather than thalweg was the proper interpretation of the word "middle" in the boundary description.

The State of Maine has taken exceptions to both these determinations. But before discussing our exceptions, I would



like to describe to the Court the substantial prejudice which the Special Master's rejection of the consent decree, adoption of the geographic middle line, and also his failure to hear full argumentation on the issues below has caused to the interests of the State of Maine.

First, of course, we have lost to the State of New Hampshire by the Master's description of the new line 636 acres of land in the intervening marine area, land which is in dispute between New Hampshire and Maine fishermen and presents a great emotional issue in both States.

QUESTION: What's that? About one square mile?

MR. BRADLEY: Your Honor, the way I visualize it is that it's about two and a half times the area between the Capitol and the Lincoln Memorial.

QUESTION: There are about 640 acres in a square mile.

MR. BRADLEY: OK if that's what it is. That's my visual reference.

But we don't feel that that 636 acres --

QUESTION: This area is off the coastline?

MR. BRADLEY: Yes, sir.

QUESTION: Or do you include in that anything in the harbor?

MR. BRADLEY: No, we have made no calculation of the area that we may have lost in the harbor.

As much section as we have to the lost 636 acres,



we feel that we have been much more greatly prejudiced by the Master's adoption of an equidistant boundary in the Piscataqua River. The Master, at page 43 of his report, indicated that it wouldn't be necessary for purposes of this dispute to delimit that boundary, but because we are going to have to live with it, we have asked State Department Office of the Geographer to do a rough approximation of what an equidistant line would look like. And they have done it on a map that refers also to the thalweg, which we distributed just prior to the argument.

As you can see, it's an extremely irregular line which would be very, very difficult to mark on the water and would give rise to great opportunities for the kinds of jurisdictional and regulatory conflict which gave rise to the dispute in this case.

QUESTION: You have submitted this map?

MR. BRADLEY: Your Honor, it's really demonstrative. It's not evidence. It wouldn't be the line that you would adopt in a decree or anything like that.

QUESTION: You wouldn't suggest the thalweg is going to be a straight line like that, do you?

MR. BRADLEY: Your Honor, it was in the consent decree. It was marked by a range line --

QUESTION: You wouldn't really suggest that's the way it is, would you?

MR. BRADLEY: It's pretty near that, your Honor.



QUESTION: A straight line? A thalweg? The deepest channel in a river, a line like that?

MR. BRADLEY: In this river, the channel --

QUESTION: That's incredible.

MR. BRADLEY: It may be incredible, sir, but --

QUESTION: The line you agreed upon, is that it?

MR. BRADLEY: Yes, sir. And it was based upon the --

QUESTION: It's not a thalweg, though. That's where you agree it is.

MR. BRADLEY: Your Honor, it's the main ship channel. It's the channel that ships actually --

QUESTION: Maybe it's misnamed thalweg, but in any event on this map the straight line is the line upon which the agreement was reached.

MR. BRADLEY: Yes, sir.

QUESTION: May I ask a question while I have you interrupted?

MR. BRADLEY: Yes, your Honor.

QUESTION: Is there any question in the case? I notice New Hampshire isn't quite as happy with that agreement now as perhaps it was at the time it was made. But the New Hampshire legislature never did agree with that agreement, did it?

MR. BRADLEY: No, your Honor.

QUESTION: Is there any question of the validity of





the executive -- of New Hampshire -- maybe I should ask your adversary whether it's a question of state law.

May there be an agreement of this kind without approval of the legislature of New Hampshire?

MR. BRADLEY: Your Honor, the position of the State of Maine is that this is not an agreement; it's merely a suggested judicial resolution which the Special Master has the power to enter as a proper exercise of the original jurisdiction.

QUESTION: I know, but it depends, does it not, upon the consents of both the States?

MR. BRADLEY: Your Honor, it's not a consent to which both States were bound, as we have seen by the actions and behavior of the State of New Hampshire in this case today, and neither State has felt bound to enforce it on their citizens or the citizens of other States. It had no binding effect until it was adopted by the court and entered.

This is really our response to one of the suggestions the Special Master has made.

QUESTION: Do we have before us the case of an alliance, whatever you call it, consent, or what, jointly submitted by the two States? Do we have that still?

MR. BRADLEY: It is a line which the New Hampshire legislature does not agree with and never agreed with it. Neither State could agree with it through the political process. The counsel for both States, through the Attorney



Generals' offices, made a determination that this was the appropriate interpretation through legal principles of the decree and suggested it to the Special Master. They have not indicated that they don't agree with it. They have just found the answers -- the Master's reasons for rejecting it unanswerable. I don't take it that that means they rejected it. They are just finding that if he is correct, that they would assert a different line in this case. That is, if he is correct about rejecting thalweg and the lack of jurisdiction of the court, that they would have applied the principles differently to obtain a different line. But it made no statement about whether they reject --

QUESTION: Is the ship channel you referred to an artificial channel that has been dredged out?

MR. BRADLEY: I really don't know the answer, your Honor. I believe that it's --

QUESTION: Is it marked by buoys?

MR. BRADLEY: It's marked by buoy in Gosport harbor. It's marked by the range lines in Piscataqua River which are lights connecting so that mariners can determine whether they are on the main channel as they come into the river.

QUESTION: Is there any authority from this Court as to whether a proposed consent decree needs the ratification of the legislative branches of the two States?

MR. BRADLEY: Yes, your Honor, I believe that there



is. I feel that the case of Virginia v. Tennessee determined that not all compacts and agreements require legislative approval and that only when the parties have done everything they can to bind themselves to an agreement that legislative approval is required.

QUESTION: Now, that's congressional approval. Is that legislative -- I was thinking in terms of what sort of authorization do counsel representing two States in an original action in this Court need in order to consent?

MR. BRADLEY: I think New Hampshire's answer to that in its motion to support the jurisdiction of a Special Master to enter the consent decree which was filed with the Special Master, and I honestly don't have it in my mind, the principles, but they have answered that with respect to their authority and determined at that time that their Attorney General did have authority to enter it.

QUESTION: What if both of the States, if the two States entered into the agreement which you have entered into and then moved to dismiss the original action by stipulation of both parties, then there would be no original action left, would there?

MR. BRADLEY: That's right, your Honor.

QUESTION: Would the terms of that agreement, then, entered into between the two States, present problems of enforceability if citizens of one State or the other elected



not to comply with it?

MR. BRADLEY: Yes, your Honor. I believe --

QUESTION: That's why you want this Court's action, I take it.

MR. BRADLEY: Yes, your Honor. There is no question that if agreement was reached outside the context of your exercise of regional jurisdiction, that we would have to find congressional approval under Article I, Section 10, the compact clause.

The point that I started to make with Mr. Justice Brandeis was that the only time that is required once the original jurisdiction has been exercised, is never required once the original jurisdiction has been exercised, because nothing the parties do in the context of the exercise binds them until the Court has exercised its judicial power.

In the case that I cited, Virginia v. Tennessee, 148 U.S. 503, the States of Virginia and Tennessee entered into preliminary boundary agreement prior to entering into binding boundary agreement, and the Court naturally held that all compacts and agreements don't require congressional approval and it's only when the States do something that actually binds themselves independent of the judiciary, I believe, or outside the context of original jurisdiction, that the approval of Congress is required. And that is consistent with the reasons that congressional approval is required in the first place,





which was to protect the United States' interest against compacts and agreements by the States which would affect Federal interests. It has been held a long time in this Court that the exercise of judicial power is a satisfactory substitute for congressional approval when original jurisdiction is exercised. And we believe that the Court has jurisdiction to enter the decree in this case.

QUESTION: What action, if any, has either of the legislatures taken on this?

MR. BRADLEY: The State of Maine legislature has taken no action. The State of New Hampshire, both Houses, as I understand, have passed concurrent resolutions rejecting the decree, but has not passed any law which is binding on them. And that's the matter of their State law which I --

QUESTION: But your legislature has done nothing.

MR. BRADLEY: Our legislature has done nothing.

QUESTION: Mr. Bradley, if the Special Master had accepted the consent decree, would the location of the line have been self-evident? Would the decree itself have identified the precise location of the --

MR. BRADLEY: Yes, your Honor, the decree does, which is the location of the thalweg and the determination of the thalweg and the straight line portion of the boundary by latitudes and longitudes.

QUESTION: And the Attorney General of New Hampshire



then agreed at one time to the location of the line.

MR. BRADLEY: Yes, your Honor, in filing that motion for joint judgment, he indicated that he not only agreed with it, but it was the appropriate application of law and fact and it was in the best interest of the State of New Hampshire at that time.

QUESTION: General, could you tell me what legal principle will support this straight line in the harbor?

MR. BRADLEY: The principle which supports it is the principle of main channel or thalweg.

QUESTION: You don't really suggest that on the ground that's where you would find the thalweg. You haven't even attempted to say where the thalweg is, have you? You have just agreed that's where it is.

MR. BRADLEY: Your Honor, we have agreed to it, but we have agreed to it by reference to charts which indicate the depths of the water and the, what we -- I understand --

QUESTION: And it turns out to be a straight line like that?

MR. BRADLEY: It turns out to be a relatively straight --

QUESTION: That's the course that mariners sail, I expect.

MR. BRADLEY: Yes, your Honor, it's definitely the course that mariners sail.



QUESTION: That would be it.

MR. BRADLEY: I have to admit that I honestly don't know that it is exactly the deepest part --

QUESTION: Thalweg doesn't mean where mariners sail, does it? Thalweg means the deepest part of the channel.

MR. BRADLEY: The main part of the channel.

QUESTION: Mariners sail what's safe to sail and if a straight line is more convenient, they sail a straight line.

MR. BRADLEY: The indication that this is the safest place to sail and therefore the deepest is the largest vessels that come into the area stay right on that range line all the time they are coming in. They don't deviate from it. As a matter of fact, in talking to pilots we have had indications that there is very little --

QUESTION: They don't need to deviate from it. It's deep enough for the deepest ships -- for the largest ships.

MR. BRADLEY: In that place.

QUESTION: On that line.

MR. BRADLEY: Yes, your Honor.

QUESTION: Suppose we were to conclude that the two parties were mistaken in their agreement that this was indeed the thalweg.

MR. BRADLEY: Yes, your Honor.

QUESTION: The fact that you consented to it wouldn't



preclude us from saying --

MR. BRADLEY: No, your Honor. If you decided --

QUESTION: That this was not the thalweg.

MR. BRADLEY: --that thalweg was the proper principle --

QUESTION: And the consent agreement should be rejected if what's to determine the resolution of the boundary dispute is the drawing of the thalweg.

MR. BRADLEY: I would agree that the consent decree should be -- that the Court would have the power and should maybe reject the consent decree, but they shouldn't accept the Master's line. What they should do is send us back for a full determination of the concept of thalweg and where it actually lies on the ground. This is one of the greatest prejudices to our interest, we feel, that we have had because of the Master's decision without oral argument --

QUESTION: You are going to get to arguing that he adopted the wrong principle?

MR. BRADLEY: Yes, I am.

QUESTION: I mean, wholly aside from the consent decree.

MR. BRADLEY: Yes, your Honor.

QUESTION: From the consent of settlement.

MR. BRADLEY: Right. I am arguing the consent decree so hard because the Master has indicated that if you have jurisdiction to enter it, that you should enter it and he hasn't





felt it necessary to recommend rejection of the thalweg line without --

QUESTION: On what basis would we have jurisdiction to enter it?

MR. BRADLEY: I think you have exercised your original jurisdiction.

QUESTION: I know, but would we not have to agree that this indeed is in law the thalweg?

MR. BRADLEY: You would have jurisdiction, I believe, whether you agreed or not. You could still reject it as an inappropriate application of law to fact without respect to your jurisdiction. You could reject it certainly for other reasons than the lack of jurisdiction.

QUESTION: Suppose that you concluded that the 1740 -- or something in history indicated that the thalweg was not the proper basis. You think that the two States by agreement could adopt the thalweg?

MR. BRADLEY: No, your Honor, not in this --

QUESTION: Is that another reason that you might have to reject the consent decree?

MR. BRADLEY: Yes, it might be a reason for rejecting it. The point that we are making in this case is that every indication in the boundary proceedings was that thalweg was meant when the term "middle" was used. The Special Master has referred to some of the evidence we refer to in our brief with



regard to the use of the channel in the Merrimack River and also with regard to deeds relied on by Massachusetts which referred to the channel of Piscataqua.

There are two indications, though, that were not cited in the brief or referred to by the Special Master which we think are a strong indication that channel was meant when the term "middle" was used. The first of these is the Charter of King Charles II to Rhode Island in 1664 which was issued just before the Charter issued to New Hampshire in 1679. That Charter is described in Rhode Island v. Massachusetts at 37 U.S. 464, and in that Charter, King Charles, the person who issued it -- one of the boundary determinations that was in the line title that the Boundary Commissioners were determining indicated that the definition of "middle" was channel. Thus when he was describing the location of the boundary between Connecticut and Rhode Island to the south, he indicated that it went to the middle or to the channel of a river there commonly called and known there by the name of Pawcatuck. We think this is a contemporaneous indication that thalweg was in vogue and being used at the time the decree was entered.

The Master has seized upon the use of the word "the half" in New Hampshire's petition for appeal as apparently the strongest basis for adopting geographic middle. And we found a passage in Belknap, History of New Hampshire, which indicates



how insignificant the use of "the half" is in a description of that boundary. Thus, it is clear that the State of New Hampshire in authorizing the appeal didn't use the word "the half." The only time it was used is by the Solicitor for the State of New Hampshire who was someone who had been hired and was in England and filing papers before the King's counsel in the petition for appeal. And the passage in Belknap which is very, very short I would just like to read because it describes the relationship between the Solicitor in England and New Hampshire's actual intention. And he says: "They oblige us to make bricks without straw. Above all, why did they not send a copy of their own appeal? For want of it, I have been forced to guess what that appeal was from loose passages in Mr. Ade's letters." So the Solicitor who used the word "the half" had to guess at what New Hampshire was doing back in the colonies. He didn't have any direct information from New Hampshire when he used the word "half." We believe this undercuts the Master's strong lines on the use of the word "half" to determine geographic middle.

QUESTION: Mr. Bradley, will you let us have the page citation? We might have trouble finding that.

MR. BRADLEY: Certainly. That's page 251, Belknap's History of New Hampshire.

Finally, I would like to also note on the use of the word "the half" in the petition for appeal was the second time



that New Hampshire had used that word. The first time they used it, they used it with regard to navigational criteria and not criteria based on geometric concepts such as geographic middle. Thus, in the boundary proceedings they indicated that the half of the Isles of Shoals was divided by the harbor or road which lay between. Now, this is a clear reference to navigational use of the area and it's consistent with the use of thalweg or channel in the other portion of the northern boundary and not with the Master's adoption of a geometric concept to determine the meaning of the word "middle."

I would like to reserve the rest of my time.

MR. CHIEF JUSTICE BURGER: Very well.

Mr. Upton.

ORAL ARGUMENT OF RICHARD F. UPTON

ON BEHALF OF PLAINTIFF

MR. UPTON: Mr. Chief Justice, and may it please the Court: In arguing for New Hampshire, I would like first to touch on a sole exception to the Master's report and then answer the arguments just made by Mr. Bradley regarding the consent decree.

Now, the question of law presented by New Hampshire's sole exception is this: Was the Master correct in ruling that it was proper for him to use low-tide elevations, that is, rocks protruding only at low tide, in the Piscataqua River as points of reference from which to calculate the geographic





middle of the river. And we argue that this ruling was incorrect, the use of low-tide elevations.

QUESTION: You affirmatively support the rest of the Master's decree?

MR. UPTON: Yes, your Honor.

QUESTION: Including his decision that the geographic middle is the right division in the river?

MR. UPTON: Your Honor, that is our position.

QUESTION: Although it wasn't.

MR. UPTON: But the geographic middle, we believe he is correct in this rule. They think he has located it improperly.

QUESTION: I understand that, but as a principle, you think the geographic middle is the right principle.

MR. UPTON: We do. In my reply brief I have argued the point as strongly as I know how with citations to the proceedings of the Boundary Commissioners in the appendix.

So we have only one complaint with the Master's --

QUESTION: Is it your position -- what is your position? Do you think that determination would preclude or did preclude the two States from an agreement?

MR. UPTON: Your Honor, the agreement was based on an entirely different concept of law. Counsel were dealing then in terms of thalweg and trying to agree --

QUESTION: Having decided that the geographic middle



is the correct legal principle historically in this situation, you think that the States were then disentitled to agree otherwise?

MR. UPTON: I think that now we have the Master's findings on that; we never tried to agree on this point in our agreement. We never covered this in our negotiations.

QUESTION: I say that, since the basis for the agreement falls out, the agreement falls out.

MR. UPTON: Yes, your Honor.

QUESTION: Whether or not your legislature approval is required.

MR. UPTON: That's our position.

So we argue that he was incorrect in calculating and locating the geographic middle of the river in using these low-tide elevations, and in particular a submerged rock off Whaleback Reef. This is the one thing which distorts the situation so much because Whaleback Reef is a tiny rock, one-third of the way out into the river. It doesn't qualify as an island. It can't be assimilated to the coast as an island under any of the tests this Court has adopted in United States v. Louisiana, 394 U.S. recently. It's a distortion of geography to say that's part of the bank of the river at low tide.

QUESTION: I am looking at the chart which is appended to your exceptions and brief filed December 23.

Where is Whaleback Reef found?



MR. UPTON: No. 3 in black ink is Whaleback Reef, the figure 3, just to the left of the line marked "Closing line of harbor."

QUESTION: I don't see that -- the line doesn't go from there, though.

MR. UPTON: No, but we were informed in the footnote on pages 42 and 43 in the Master's report, the bottom of page 42: The way the median line is calculated is to run arcs to the compass to nearest points. He said, "The significant points in the Piscataqua Harbor are those low-tide elevations and low water lines on either side of the harbor that are nearest each other," and he mentions Whaleback Reef, there. He gives that as a point of reference in calculating the median line. We say that was error.

QUESTION: He doesn't use that itself as a headland point.

MR. UPTON: No, your Honor. He uses it as a point of reference in calculating the median line of the river.

QUESTION: I see. And this chart shows, as I understand it, the difference in the boundary line that would result if you are correct in this exception.

MR. UPTON: If I am correct, yes, your Honor.

As the Court can see --

QUESTION: What is the difference between points A and B there?



MR. UPTON. 350 yards. It makes a difference because it deflects the straight line boundary all the way from there up to the Isles of Shoals, a distance of six miles. The deflection of that line at that point, 350 yards, makes a difference of 300 acres to New Hampshire over the whole area.

QUESTION: Would the lines be parallel?

MR. UPTON: They are not; they converge, your Honor, at one point at the Isles of Shoals. It's a long V-shaped gore.

QUESTION: I see.

QUESTION: Mr. Upton, since you are interrupted, I am kind of new at this kind of litigation. What is the standard of review that we should apply in deciding how gross the error of the Master must be before we take another look at it?

MR. UPTON: As I view it, the Master's report is entitled to a strong presumption of correctness.

QUESTION: So it's not enough for you merely to persuade us that he might have done a better job.

MR. UPTON: If he committed an error of law, of course, questions of law may always be corrected in this Court.

QUESTION: I didn't understand you to contend that it would never in any situation be appropriate to use these low-water projections, whatever they are called. You are just





saying in this particular case they are inappropriate.

MR. UPTON: I say, your Honor, that it's contrary to any of the precedents in international law that I have been able to find. It's contrary to the the precedents in international law that I have been able to find, it's contrary to the holdings of all the writers in this field that we have cited on pages 7 to 9 in our brief, and it's contrary to the holdings of this Court in United States v. Louisiana.

QUESTION: Were those holdings on particular fact situations, or do you read those as saying as a matter of law it's never appropriate to use the standard?

MR. UPTON: Your Honor, one of the tests they use is that proposed by Mr. Boggs, the former Geographer of the State Department, to draw parallel lines from the end of each offshore formation to the shore. And if the amount of water area between the island or offshore formation and the shore is greater than the offshore formation, then it can't be assimilated to the shore and used as a point of reference.

In this situation, this is obviously too small and too far removed from the shore to qualify under that test. And I understand that approach is almost a question of law.

Now, both parties have in their briefs gone farther than to argue merely the point of whether a measurement should be made from these offshore formations, whether they are properly a part of the bank of the river from which one should



measure, and we have gone into the analogy of various articles of the Geneva Convention of the Territorial Sea . Now, we may have complicated matters by doing this, but we feel obliged to go into it because the Master did. And he used it to justify what he had done here.

I think it all stems from Article XII of the Geneva Convention of 1958, which states that the territorial sea outside of internal waters should be divided between States whose coastlines are adjacent by the median line principle, measured from the nearest points on each State's baseline.

Now, the Master has apparently applied this analogy to internal waters, because we are here in internal waters inside the closing line of the harbor, whether one looks at it by Maine's standpoint or by New Hampshire's standpoint. But I urge to the Court that if we are to apply this analogy of international law to internal waters, it ought to be done with extreme care, and with an eye to the real purposes of the convention. To do it, we have to consider Maine and New Hampshire as foreign States having opposing coastlines on each side of the river. But this is a very narrow river. It's a little over a mile and a half wide at the mouth, and it narrows down as we go further inland. Now, how would coastal baselines be drawn on each side of the river from which to measure the median line or boundary? And we say that if this analogy is to be followed at all, Article III should



be used, that is, the normal baseline follows the low-water line on the mainland, that islands should only be considered part of the shore if they qualify in the tests of United States v. Louisiana, that is, if their size and closeness makes them really an integral part of the mainland, and that the use of low-tide elevations, that is, rocks exposed only at low tide as part of the base line, is optional under international law and to use these as measuring points in such close waters is apt to create distortion and unequal division of the waters of the river. And that's just what it would do if this happens. I think it is demonstrated.

At the very least, a low-tide elevation should not have more influence than an island, but if the Master is correct, he would be giving it that effect, and we say that that was his principal error. Otherwise, we have no objection to his report.

Now, Maine has referred to Article IV of the Convention which is an optional method of drawing long, straight baselines. It's optional, not mandatory. And it was fathered by the decision of the international court of justice in the Anglo-Norwegian fisheries case in 1951. It's optional. It applies to the peculiar coastline that was found off Norway with many deeply indented fjords. It's not appropriate to apply by analogy to closely bounded internal waters, and the decision was never accepted by the United States Government.



In fact, although it was advocated by California, it was not followed in United States v. California, and to use this method and to use Whaleback Reef would cause much more than a 15 percent departure from the general direction of the main shore, which was the maximum thought permissible in the Anglo-Norwegian case.

Now, turning to the point that occupied the Court's attention when Maine was arguing the rejection of the motion for entry of judgment by consent, was the Master correct in rejecting it? And is New Hampshire's present position in support of the Master correct?

We believe the Master gave sound reasons, sound and adequate reasons, for recommending rejection of the consent decree, and we have not taken any exception to this ruling. The motion for entry of judgment by consent -- and I took part in it -- was an effort by the two States to get a compromise settlement -- frankly, a compromise settlement -- approved. It had to become a judgment of this Court or it would do us no good because our State had already unilaterally adopted a boundary line inconsistent with anything Maine would agree to and our legislature had provided this shall be the line governing all public offices of New Hampshire unless and until modified by a compact or by judgment of the United States Supreme Court.

QUESTION: Was that just a resolution by your





legislature, or was it approved by the Governor?

MR. UPTON: That, your Honor, was a law which passed and was approved by the Governor, the one I just quoted, and that was passed before we entered into this compromise agreement. It was signed by the Governor. It is quoted in the appendix to our brief.

QUESTION: That line went some 200 miles out to sea, didn't it?

MR. UPTON: That was the next section of that chapter, your Honor.

QUESTION: Well, then, when you entered into the compromise agreement, I take it that those who were acting on behalf of the State of New Hampshire felt it was consistent with that first act of the New Hampshire legislature?

MR. UPTON: We felt that it could only be made consistent, your Honor, if this Court approved it and adopted it and made it a judgment of this Court. In that case it came within the exception of the statute.

QUESTION: And, of course, you don't know whether this Court will approve it or adopt it until you have submitted it to the Master and he in turn has submitted it to the Court and this Court has decided one way or the other, I suppose.

MR. UPTON: That is correct, your Honor. The matter rests in the hands of this Court at this moment, because you do have the power, I believe, if you find that is the law,



to enter the consent decree.

QUESTION: Well, in a sense, it is like a stipulation where you settle a personal injury claim or something; two lawyers get together and agree and they have to submit it to the court, so the matter remains open until the judge actually approves the stipulation.

MR. UPTON: That's true. Although in the case of a personal injury case, your Honor, the parties have the power to make such a settlement without the intervention of the court. They could just --

QUESTION: The injured party ..

MR. UPTON: In that case I have to confess it requires the approval of the court.

QUESTION: That is the sort of thing I think my brother Rehnquist suggests. There is a public interest. Of course, we have had this problem.

MR. UPTON: This problem always exists, and I suppose it exists in a criminal case where a man pleads guilty and counsel attempted to work out an arrangement as to what the recommendations will be for sentence. It's placed before the court, and the court may or may not accept it and may impose a harsher penalty or a lesser penalty. But the matter is in the hands of the court.

QUESTION: Isn't there some contract law theory that would say neither party has the right to repudiate it during the



reasonable time that it has taken to go through the steps necessary for judicial approval?

MR. UPTON: Your Honor, I take this to be the position regarding contracts, that if this is not to become a judgment of this Court, then it must be a compact which requires the consent of the United States Congress in order to be binding on the States, because this Court has several times held that the resolution of boundary disputes between States falls within the compact clause if the case is not settled by a judgment of this Court. That would be my answer.

Now, this was frankly a compromise on which we needed the Court's approval, but at the time we did this we were unaware of what your Honors were going to hold in New York v. Vermont or Vermont v. New York, and that decision came down in the summer of the time these negotiations were going on. Now, we compromised in these ways: The thalweg versus the geographical middle. New Hampshire accepted the thalweg and then we further compromised on the thalweg by deciding we would agree it is a straight line when in fact, of course, it can't be physically. But for convenience, for the convenience of law enforcement, we agreed that it was the thalweg and that that was it.

Secondly, the mouth of the harbor, for determining the point where the thalweg ended, we agreed was the line going from Odiorne Point to a submerged rock called Kitts Rock



which has a whistling buoy on it. Now, this, again, was an arbitrary compromise for administrative convenience, but it has no relation to law, the law that applies to tell where a harbor's mouth is.

And, finally, we agreed that the line across the open sea would be a straight line rather than a curved line as sought by Maine based on the United States Geological Survey maps, and here the Master has found that we adopted correct law. The straight line is proper under the special circumstances exception of the Geneva Convention.

Now, when the terms of this settlement were proposed to the Master, he told us he now doubted that he had the power to accept it, although he had earlier urged us to try to settle.

QUESTION: That is because of the intervening decision of Vermont v. New York.

MR. UPTON: Yes, your Honor. And we held a hearing on that. It appeared likely that he might rule to accept it; he might accept it with modifications; he might reject it and call for an evidentiary hearing in full; or he might proceed to decide the case either for New Hampshire or for Maine on the record we made for him, because when we knew about Vermont v. New York we tried to repair the situation by presenting the Master with a stipulation for an evidentiary record which is reported in full on pages 2 and 3 of the





record, so he would have something by which to judge the lawfulness and reasonableness of the stipulation.

Now, he recommended rejection. He thought we were presenting him with a fait accompli which he would merely rubber stamp and which did not call for the exercise of the judicial power, that is, applying established principles of law to facts which either have been stipulated to or settled by the evidence. He felt that this wasn't that kind of a thing. He had been presented with something that wasn't judicial in nature and not a proper basis for a judgment.

He then found that the record we had stipulated to before him as a basis for deciding the case was sufficient for him to make a decision on the merits without further hearing, and he then proceeded to decide, as my brother Bradley has outlined in his opening statement.

Now, we believe that the Master was correct in adopting geographic middle as opposed to thalweg. We compromised that position in the beginning in order to obtain what we thought was doubtful, that is, a straight line across the open sea which we felt was very important to us.

QUESTION: Mr. Upton, looking at the consent decree lines, so-called, which appears in the appendix to the response of the State of Maine to New Hampshire's exceptions, what accounts for that line CEF? If you have that little tan brief. What accounts for the segment of the line CE? Why wasn't it



drawn from C, which is the thalweg middle? What was the F?

MR. UPTON: E, your Honor, was the point we agreed on in the consent decree as being the mouth of the harbor and the end of the thalweg.

QUESTION: Then what is C doing there?

MR. UPTON: C is the line -- I believe my brother means that C is the line drawn by the Master, C to D.

QUESTION: Yes, but if you look at the key to the appendix in the upper left-hand corner, the consent decree line is denominated as CEF.

MR. UPTON: That's right, your Honor. The reason we --

QUESTION: Not just CF.

MR. UPTON: CD is the line found by the Master.

CEF is the consent decree, and we extended the thalweg out to E, which is a point we agreed in our stipulation to be the mouth of the harbor. So then we took off across the sea.

QUESTION: I see. So that E is the thalweg as far as it goes out into open sea.

MR. UPTON: Yes, sir. And we stipulated that would be the mouth of the harbor by arbitrarily drawing a line from Odiorne Point across to Kitts Rock whistling buoy at that location.

QUESTION: All right. Thank you.

QUESTION: For purposes of enforcement, Mr. Upton, how would these areas be identified under the consent decree?



MR. UPTON: . . . we go off to sea -- and this is where the biggest trouble of enforcement is, your Honor -- we would ask Maine to participate with us in putting range lights on Newcastle Island, one behind the others, lined up with this line, and we have asked the Court -- and Justice Clark has recommended to the Court -- that a commissioner be appointed to mark the line when the report becomes final. This has been done in most of the boundary cases. It was done in Vermont v. New Hampshire; after the Court had adopted the law and decided how it applied, a commissioner was appointed to mark points on land where the agreement states. And we think this would be appropriate here.

QUESTION: His function would have some finite limits in the sense that when he finished marking, that would be the end of his job.

MR. UPTON: Yes, your Honor.

QUESTION: It didn't require any ongoing judicial supervision.

MR. UPTON: He would have hardly any discretion as I see it. I agree with your Honor's suggestion.

QUESTION: But from the point of view of the lobster fishermen, there would be range lights that they could --

MR. UPTON: They would have much the same effect as the lights on range that the lobstermen fought so hard to have, that is, two lighthouses, one behind the other.



QUESTION: Those are existing lighthouses, they go way back.

MR. UPTON: They go way back in history.

QUESTION: And the claim is that as a matter of practice, that's been the practically recognized boundary over the years.

MR. UPTON: That's what the claim is.

So we entered into the compromise realizing that it would have to be approved. We had Vermont v. New York; we had the stipulated record, and we had the Master moving that it be rejected, and we had detailed findings by him that it was the geographic middle rather than the thalweg. And we support that ruling because in reviewing the record of the Boundary Commission, we find that when they referred to the Merrimack River on the south, they always used the words "middle of the channel," whereas when they referred to the Piscataqua River on the north, they used "middle of the river." And New Hampshire's Commissioners talked about losing half the river to Maine, then Massachusetts, and the Massachusetts Commissioners said the line has always been in the middle of the river because those islands nearest to each State have always been taxed by each State, and we say that language speaks in terms of geographic middle just as in the case of Texas v. Louisiana where your Honors felt that the intent of Congress was directed to the middle of the river, geographic





middle rather than the thalweg. And we feel this case is equally strong.

Thalweg was not in vogue as a tool of interpretation in 1740. Also, we were then under British colonial rule where there was freedom of navigation to all British subjects, including colonists. There was no obstruction to freedom of navigation, which is one of the things that makes thalweg applicable.

I have not touched on the "lights on range" argument of the amicus curiae because there is no exception before the Court raising that question. But if the Court is interested in considering it, there is an apt quotation in United States v. Louisiana, 394 U.S. at page 76. "The unauthorized acts of private citizens could generally not support a claim of historic title."

So in conclusion we submit that the Master's report should be confirmed with the exception that the Court should hold it was error to use these low-tide elevations.

QUESTION: What precisely, if we were to agree with you, would that mean in respect to relocating the geographic middle?

MR. UPTON: I believe that on that issue the case should be referred back for findings.

QUESTION: How do you think it would affect it? How about, for example, the center point of the mouth of the



harbor, where would it move to? How far would it move, do you know?

MR. UPTON: It makes a difference of 350 yards, your Honor, whichever view is adopted --

QUESTION: It's in the appendix to your exceptions at brief.

MR. UPTON: Right.

QUESTION: How much acreage --

MR. UPTON: We would gain or lose about 300 acres, depending on the result.

QUESTION: That's that long "V" you were telling me about.

MR. UPTON: Yes, your Honor.

QUESTION: Mr. Upton, just one more question before you sit down.

As I understand your brief, you in part argue that the Master did not adequately consider the low-tide elevation point; Do you make argument before us that you did not make before him? Did he have the same chance to appraise this issue you are asking us today?

MR. UPTON: He brought this up for the first time, your Honor, in his report. This was not argued by the parties; it was suggested by him that he might consider it.

QUESTION: Do you take exception to the procedure he followed?



MR. UPTON: No, I don't object. I object to his ruling.

QUESTION: Your brother takes exception.

MR. UPTON: They did.

QUESTION: You don't take exception.

MR. UPTON: I don't object to it because I think we are protected, and I think the Court can refer it back for hearing on this one point if it so decides.

MR. CHIEF JUSTICE BURGER: Mr. Bradley, you have about 9 minutes left, if you need it.

REBUTTAL ARGUMENT OF EDWARD F. BRADLEY, JR.

ON BEHALF OF DEFENDANT

MR. BRADLEY: Mr. Chief Justice, I would like to refer briefly to the questions that were raised with respect to whether a factual determination is required in determining whether these low-tide elevations the Special Master used qualified for the tests under the Geneva Convention.

The arguments that my brother Upton has made that this is not an island, a low-tide elevation within the meaning of island, part of the mainland. These kinds of questions have given rise to substantial evidentiary hearings in cases in Louisiana, an opportunity which the State of Maine nor the State of New Hampshire has had because of the way this came up to this Court.

This is a problem in another regard. The Special



Master, we believe, has seriously prejudiced a right of the State of Maine that exists outside the issues in this dispute. Thus the Master found it was essential to determine where the location of inland waters was, because he felt this Court in U.S. v. Maine had determined that there was no ownership in the intervening area between Gosport Harbor and Piscataqua. But we believe that this is inconsistent with the reservation of jurisdiction which this Court has exercised at 421 U.S. 958 in granting the motion of the United States Government to reserve its jurisdiction to determine questions just in this nature. The State of Maine has an historic inland water claim and other coastline claims which would give it sovereignty over the area between Piscataqua Harbor and Gosport Harbor, and we believe that we should have the opportunity to be permitted to apply the criteria that the Court has announced in dealing with similar claims in the States of Alaska, Florida, and Louisiana in just last term.

The Master's determination has precluded us from doing that, and we didn't even know he was doing it until the report came out. We didn't, in choosing thalweg, in choosing straight line portion of the boundary, think that we needed to determine the extent of inland waters, which is why the questions which the Master has focused so strongly on with respect to the location of inland water and geographic middle are almost irrelevant to the determinations that went into the





consent decrees.

All we needed to do was to decide thalweg was appropriate in the river and in the harbor, and then determine whether the line ended. That didn't need any great application of legal principle, because it was a factual question. The channel gradually disappeared as it hit the open ocean. We didn't need to determine mouth of the river. And I submit we didn't. All we did was determine a reasonable place for the thalweg to end without having any requirement for determining inland waters.

We believe we have been prejudiced by the determination of the Master, and that if you are going to use a concept of inland waters, that we ought to have our opportunity in this Court. These boundaries are very serious things to the States. We are going to have to live with them for a long time. We believe we deserve the opportunity to have a full determination of our facts in evidence before the Court summarily accepts the report of the Special Master.

QUESTION: Let me see what that comes down to. If we were to agree on geographic middle --

MR. BRADLEY: Yes, your Honor.

QUESTION: -- you suggest that on this record that would be inappropriate without Maine having a further opportunity to have a determination of inland waters?

MR. BRADLEY: Your Honor, we have never had the



opportunity --

QUESTION: I know, but is that what you are arguing?

MR. BRADLEY: I am arguing that we should have opportunity for hearing on geographic middle, on inland waters, and also the rejection of thalweg.

QUESTION: What relevance does the determination of inland waters have on the determination of geographic middle?

MR. BRADLEY: The Master felt that he had determined the location of the geographic middle by a closing line across inland waters to determine the end point of the straight line terminus and the boundary --

QUESTION: What I am getting at, whereas you say you might be able to persuade him to the contrary as to the closing line which then would have an effect on the location of the geographic middle?

MR. BRADLEY: No, I am only saying that if you choose the principles that we adopted in our judgment for consent decree, it's unnecessary to determine the extent of inland waters. That can be left an open question for determination.

QUESTION: What if we disagree with you on that?

MR. BRADLEY: If you disagree with us?

QUESTION: On the principles on which you based the consent decree.

MR. BRADLEY: Then, if you do, your Honor, I believe that you should send it back to the Special Master for a



determination so we could have a full opportunity to develop them. We haven't had that opportunity to this point.

QUESTION: What is it you want to develop?

MR. BRADLEY: I suggest that we --

QUESTION: If we disagreed with the principles on which the consent agreement --

MR. BRADLEY: I am suggesting, your Honor, that you don't have a proper development of the case at this point to determine whether you can disagree with us. I have suggested two things today that weren't even mentioned before the Special Master. You know, the question of whether a contemporaneous Charter in Rhode Island has any effect on the usage of thalweg. I suggested that the Master seriously overestimated the concept of "the half" when it was used in a petition for appeal.

I believe there are hundreds of other items --

QUESTION: Did you stipulate a record before the Special Master or didn't you?

MR. BRADLEY: Yes, we did, with respect to the --

QUESTION: And I suppose the purpose for stipulating it was to help him in determining whether he could accept or reject the consent decree.

MR. BRADLEY: Just the concept of thalweg, your Honor. It had nothing to do with the concept that he ultimately adopted. And we believe that if he is going to both not only



reject our consent decree, but adopt an entirely new principle, that we ought to have an opportunity to present our case with respect to whether that's appropriate or not.

QUESTION: You say that the only trial you had was basically a truncated one devoted to the authorization for the consent decree rather than a fight on the merits.

MR. BRADLEY: Yes, your Honor, we had no fight on the merits and no opportunity. And it's going to be hard enough to enforce the line that the Master has adopted. It is going to be extremely hard if the people of Maine feel they have not had the proper opportunity to present their position to the Court.

QUESTION: You don't think there is enough in the record for the Master to have not only rejected the consent decree and to have said, "I will not accept the thalweg as the principle for division," but to go on and say the proper principle is the middle of the river.

MR. BRADLEY: Yes, your Honor.

QUESTION: Do you mean you want to put on evidence or just want to argue?

MR. BRADLEY: No, sir, I want to go back through the documents, I want to go back through the usage. I want to have --

QUESTION: My brother Brennan tried to get from you what you wanted to present as of now.

MR. BRADLEY: As of right now, I don't have a full --





we haven't developed the case as entirely as it should have been to this point. We are really at a stage now where we are no more than at a preliminary trial stage, because of the way the case developed below you. You don't have a full development of any of the facts or issues in this case.

QUESTION: Mr. Bradley, let me understand. You are arguing that if you had a full opportunity, you might be able to persuade him that he should not adopt the geographic middle principle. Are you also arguing that if he does adopt the geographic middle principle, it might be placed elsewhere?

MR. BRADLEY: No, your Honor, I believe that if he does adopt the geographic middle, that the only --

QUESTION: He has got the right line.

MR. BRADLEY: That he has the right line.

Thank you very much.

MR. CHIEF JUSTICE BURGER: Very well, gentlemen.

Thank you. The case is submitted.

(Whereupon, at 10:59 a.m., oral argument in the above-entitled matter was concluded.)



IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 64, ORIGINAL

THE STATE OF NEW HAMPSHIRE, PLAINTIFF

vs.

THE STATE OF MAINE, DEFENDANT

PLAINTIFF'S MEMORANDUM TO THE  
SPECIAL MASTER

The undersigned representing the plaintiff, State of New Hampshire, desire to call to the attention of the Special Master House Concurrent Resolution No. 4 which was passed by the New Hampshire House of Representatives on February 27, 1975, by a vote of 279 to 67 (more than a two-thirds majority) and was concurred in by the New Hampshire Senate on March 11, 1975, by a vote of 14 to 9 (less than a two-thirds majority). A true copy of this Concurrent Resolution is attached to this Memorandum.

By its very terms, a Concurrent Resolution is not presented to the Governor for approval and signature and does not have the force of law under the New Hampshire constitution. We have attached to this Memorandum excerpts from the New Hampshire constitution, namely, Articles 44 and 45 of PART SECOND which support this viewpoint. We also call to the attention of the Special Master the cases of Moran vs. LaGuardia, 270 N.Y. 450, 1 N.E.2d 961; Application of New York,



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Susquehanna and Western Railroad, 25 N.J. 343, 136 A.2d 408, and Koenig vs. Flynn, 285 U.S. 375. See also the comment of the editor in "The Constitution of the United States of America" (Analysis and Interpretation) prepared by the Legislative Reference Service, Library of Congress, 1953 edition at page 104, commenting on Clause 3, Section 7, Article 1 of the United States Constitution, which is similar to the New Hampshire Constitution in its treatment of legislative resolutions.

We also attach to this Memorandum a copy of the Resolution passed by the Governor\* and Council at their meeting held June 26, 1974, approving the proposed settlement with Maine. This Resolution remains in full force and effect.

The Concurrent Resolution (CCR 4) refers to the provisions of RSA 1:15 of the Revised Statutes Annotated of New Hampshire as enacted by Chapter 580 of the Session Laws of 1973. We have attached to this Memorandum a copy of this section of the statute. We call attention to the fact that this act of the legislature was a unilateral establishment of the boundary enacted in 1973 pending the outcome of negotiations and contains in its provisions the statement that the boundary there claimed is to remain in effect "until otherwise established by law, interstate compact, or judgment of the Supreme Court of the United States". This legislation took effect July 5, 1973, shortly after the complaint was filed in this action on June 6, 1973, and was intended to provide a "stop-gap" marine boundary until the judgment

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\* The Governor is elected by and represents all the people of the State.



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of the Supreme Court of the United States could be obtained. It has always been and remains our belief that the proposed consent decree when approved by the Supreme Court of the United States would be in all respects a "judgment" of that Court within the meaning of RSA 1:15. See our prior Memoranda. The authority of the Attorney General of a state is discussed in the annotation entitled "Power of Attorney General to settle and compromise or dismiss suit or proceeding", 81 ALR 124. See also the discussion in "Attorney General" Section 15, 7 Am Jur 2d at pp. 18 ff. There is no reason to believe that the New Hampshire Attorney General has any less power, although the only analogous cases are State v. Swift, 101 N.H. 340, 143 A.2d 114, and St. Regis Paper Co. v. New Hampshire Water Resources Board, 92 N.H. 164 at 167, 168, 26 A.2d 832.\* Here, the Attorney General acted with the approval of the Governor and Council, which body under Article 62, PART SECOND of the New Hampshire Constitution is constituted as "a council for ordering and directing the affairs of the state according to the laws of the land". The New Hampshire Supreme Court has held that the Governor and Council have full control of all litigation in which the state is engaged, in the first instance. Opinion of the Justices, 103 N.H. 508, 175 A.2d 396; Opinion of the Justices, 110 N.H. 26; 259 A.2d 660. The language of these advisory opinions appears to make it clear that the course of litigation may be controlled by the legislative branch, if at all, only by the enactment of legislation which has the force of law, i.e., approved by the Governor. See Application of New York, Susquehanna and Western Railroad, 25 N.J. 343, 136 A.2d 408.

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\* Cf. Swift & Co. v. U.S., 276 U.S. 311 at 331, 332.





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As attorneys and officers of the Court, we are calling these developments to the attention of the Special Master for whatever bearing they may have on the matters now pending before him.

As attorneys and officers of the Court, we feel bound by the provisions of the stipulation for consent decree which we signed in good faith honestly believing it to be in the public interest, unless and until otherwise ordered by the Special Master or the Court.

Respectfully submitted,  
The State of New Hampshire  
By Warren B. Rudman,  
Attorney General

By David H. Souter,  
Deputy Attorney General

By Richard F. Lipton  
Special Counsel for the  
Plaintiff, State of New  
Hampshire



IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

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NO. 64, ORIGINAL

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THE STATE OF NEW HAMPSHIRE, Plaintiff

v.

THE STATE OF MAINE, Defendant

PLAINTIFF'S MEMORANDUM OF LAW  
ON JURISDICTION TO ENTER CONSENT DECREE

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The State of New Hampshire



IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

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No. 64, Original

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THE STATE OF NEW HAMPSHIRE, Plaintiff

vs.

THE STATE OF MAINE, Defendant

PLAINTIFF'S MEMORANDUM IN SUPPORT OF THE  
JURISDICTION OF THE COURT TO ENTER A  
CONSENT DECREE AS PROPOSED

I. The proposed consent decree is not open to the objections expressed in Vermont v. New York (No. 50, Original) decided June 3, 1974.

In Vermont v. New York (No. 50, Original) decided June 3, 1974, the Supreme Court rejected a proposed consent decree on two grounds: (1) The proposed consent decree contained no findings, rulings or adjudication, and therefore was not a judicial act; and (2) the proposed consent decree required lengthy, continuing supervision by a Water Master, under an arbitral procedure outside the scope of the "judicial power".

In contrast, the proposed consent decree in the present case contains specific findings and rulings and sets forth the precise factual basis and legal principles upon which it is founded. The selection of



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the middle of the navigable channel as the boundary at the respective harbor mouths follows New Jersey v. Delaware, 291 U.S. 361, which involved a situation much similar. The selection of a straight line as the boundary connecting the two channel termination points is consistent with the "special circumstances" exception to Article 12 of the Convention on the Territorial Sea and Contiguous Zone. (15 U.S. Treaties, 1608,(1958)) and the location of the Isles of Shoals offshore, which were divided between the two states in their colonial grants or charters.

If the proposed consent decree is approved, it will constitute a definite and final adjudication of the boundary line in issue. As such, the decree is clearly a judicial act.

The provisions of paragraph 13 for the appointment of a commissioner for marking the boundary if the parties are unable to agree on the proper location of the markers, does not involve continuous supervision, but rather calls for the accomplishment of specific acts within a limited period of time, and is consistent with like provisions in decrees heretofore rendered by this Court in boundary cases. For example, see the decree in New Hampshire v. Vermont, 290 U.S. 579.

The proposed consent decree as a whole is quite similar to the kind of decree which one would expect this Court to enter, had the case been contested and tried to final decree. It contains provisions normally found in such decrees. See the decree in New Jersey v. Delaware, 295 U.S. 694.





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II. The Supreme Court has frequently given effect to the stipulations of the parties in its decrees in cases under its original jurisdiction.

The opinion of the Court in Vermont v. New York, supra, (No. 50, Original) decided June 3, 1974, strongly implies that if the consent decree had been properly drafted, it was within the power of the Court to approve and adopt.

Other cases under the original jurisdiction of this Court, in which the Court either entered consent decrees or adopted stipulations of the parties, or in which one state admitted the claims of another state (in effect, a consent decree), or in which the Supreme Court declared the law and requested the parties to submit a consent decree, are the following: Va. v. Tenn., 148 U.S. 503; 158 U.S. 267 at 271; 177 U.S. 501; Ky. v. Ind., 281 U.S. 163 (admission of complaint by defendant); Neb. v. Iowa, 143 U.S. 359 at 370; 145 U.S. 519; Mo. v. Neb., 196 U.S. 23; 197 U.S. 577; Iowa v. Ill., 147 U.S. 1; 151 U.S. 238; 202 U.S. 59; Ga. v. So. Carolina, 257 U.S. 516 at 523; Ariz. v. Cal., 373 U.S. 546\* at 602; Utah v. U.S., 394 U.S. 89 at 94-95.

In numerous other cases, the Supreme Court has recognized the validity of consent decrees and held that they were valid judicial acts, binding on the parties, and subject to modification by the Court for reasons justifying the modification of any judgment or decree of the Court. For example, Nashville etc. R.R. Co. v. U.S., 113 U.S. 261,

\* See also same case at p. 595,  
headnote 37.



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Thompson vs. Mexican Land Grant & R.R. Co., 95 U.S. 391, Harding v. Harding, 198 U.S. 317, U.S. v. Swift & Co., 286 U.S. 106.

If it be claimed that the stipulation of counsel contained in the motion for consent decree, is in effect an interstate compact requiring the approval of the Congress under the terms of the U. S. Constitution, Article I, Section 10, Clause 3, we think such claim entirely misconceives the situation here presented.

The two states did attempt to settle this boundary question by the appointment of Boundary Commissions containing representatives of each state. The plan was that the two sets of Commissioners would make a compact if possible, settling the boundary, which would then be submitted to the Congress for ratification under the compact clause, after having first been approved by the legislatures of each state. See ch. 429, N. H. Session Laws of 1971 and ch. 131, Maine Session Laws of 1971.

However, after protracted negotiations, the Boundary Commissioners were unable to agree and there seemed no prospect that there would be an agreement. The "fishing politics" of each state made it extremely difficult for either side to compromise.

Then there were the border incidents resulting in arrests and threats of retaliation, and this situation led the Attorney General of New Hampshire to institute the present action in the United States Supreme Court, believing that the compact process had broken down and



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failed and that it was now time to seek judicial relief. The Supreme Court granted leave to file this action, in effect holding that a justiciable controversy existed. (See order of Oct. 9, 1973 in 38 L. Ed. (2) 45)

At the pretrial conference conducted by the Special Master in Boston in April of this year, it was strongly recommended to counsel that efforts to effect a compromise be redoubled. We were able to come to an agreement because the respective Attorneys General and their assistants and Special Counsel were perhaps more objective and less politically motivated and were trying to see the case as lawyers would see it, based on the strengths and weaknesses of the evidence and the probable law which would be applied.

It would seem that every court which has jurisdiction would have the power to promote a settlement and approve it and make it a decree. It would seem as if this was an inherent power of every judicial body, if it be granted that there is jurisdiction over the subject matter and the parties. Otherwise, the parties would be forced into an adversary position when the respective Attorneys General of the two states thought that a compromise of their pre-existing differences was reasonable and in the public interest.

The case of Florida v. Georgia, 58 U.S. 478, seems to imply that the two states could come to an understanding in a boundary case before the United States Supreme Court, because there it is held that



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the Attorney General of the United States has a right to intervene to represent the federal interest in such a case.

Parenthetically, in the present case, we have notified the Department of Justice and have sent it a copy of the motion for consent decree. A Department of Justice attorney in the Marine Resources Section has been keeping in touch with the negotiations and the progress of this case and has indicated verbally that the Department will have no objection to the efforts of the two states to reach a settlement. The certificate of notice to the Department of Justice is being filed with this memorandum.

It is difficult to believe that an agreement for compromise settlement between the respective Attorneys General in a case over which the Supreme Court has jurisdiction is a compact requiring the approval of Congress, for so to hold would seem to be a derogation of the inherent power of the Supreme Court as a judicial body and to involve the Congress in a judicial matter, outside its allotted sphere.

It is the policy of the law to favor the settlement of litigation and to give sanction and legal effect to such settlements where they are found to be reasonable and appropriate. The Supreme Court must surely have this power, as well as any other Court. Otherwise, it would be deprived of one of the most useful parts of the judicial power.

The motion for entry of the consent decree has been stipulated to, by the Attorneys General of each state. As to the undoubted power





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of the Attorney General of a state to take such action, see annotation: "Power of attorney general to settle and compromise or dismiss suit or proceeding" 81 ALR 124. Here, the further precaution was taken to obtain approval of the settlement by the governor and executive council of each state who head the executive branch and may speak for all state departments and agencies.

If the Special Master should decide to hold a hearing on the motion for entry of consent judgment, we are prepared to show, if desired by the Court, that the proposed boundary line set forth in the motion is not an arbitrary line, but rather is a line supported by applicable principles of law and substantial evidence.

Respectfully submitted,  
The State of New Hampshire  
By Warren Rudman  
Attorney General

David Souter  
Deputy Attorney General

By /s/ Richard F. Upton  
Special Counsel



IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

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NO. 64, ORIGINAL

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THE STATE OF NEW HAMPSHIRE, PLAINTIFF

vs.

THE STATE-OF MAINE, DEFENDANT

JOINT MOTION FOR ENTRY OF FINAL ORDER

On June 14, 1976, this Court ordered entry of the Consent Decree filed by the parties in the above entitled case. Under the terms of the Decree, a stipulation to locate and mark the states' lateral marine boundary was to be filed with the Court by June 9, 1977, an 180-day extension having been granted beyond the original filing date of December 11, 1976.

Pursuant to the terms of the Decree, the parties have examined the various methods by which the boundary line might be located and marked. The State of New Hampshire and the State of Maine agree that 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, will be sufficient publication of the Court's decision and that the benefits of locating and marking the boundary by markers and/or navigational aids do not justify the expense that would be incurred.



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Consequently, the parties hereby move that paragraph 15 of the original Decree which requires the placement of markers and/or navigational aids to locate and mark the lateral marine boundary be stricken.

Respectfully submitted,

THE STATE OF MAINE

By Joseph E. Brennan  
Joseph E. Brennan  
Attorney General

THE STATE OF NEW HAMPSHIRE

By David H. Souter  
David H. Souter  
Attorney General

Dated: July 22, 1977



