No. ____ , Original

IN THE

Supreme Court of the United States

STATE OF NEW HAMPSHIRE,

Plaintiff,

v.

STATE OF MAINE,

Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT, COMPLAINT AND BRIEF IN SUPPORT OF MOTION AND COMPLAINT

STATE OF NEW HAMPSHIRE

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March 6, 2000

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MOTION FOR LEAVE TO FILE COMPLAINT

NOW COMES the state of New Hampshire, by and through the Attorney General, Philip T. McLaughlin, and respectfully asks leave of the Court to file its Complaint against the state of Maine, submitted herewith.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

STATEMENT OF THE CASE

The state of New Hampshire brings this suit under the Court's original and exclusive jurisdiction to decide controversies arising between two or more states. The controversy between the state of New Hampshire and the state of Maine concerns the location of their common boundary in the inner portion of Portsmouth Harbor. The state of New Hampshire asserts that its eastern boundary with Maine in Portsmouth Harbor extends to the low water mark of the Maine shore, and encompasses the islands on which the Portsmouth Naval Shipyard is situated.[1] Conversely, the state of Maine asserts a right to a prescriptive boundary located along the main or deepest channel of the Piscataqua River, on the New Hampshire side of the shipyard islands, that would place over half of Portsmouth Harbor within the State of Maine.[2]

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[1] The Portsmouth Naval Shipyard is hereinafter referred to as the "Shipyard," which term is intended to include related naval facilities including the Naval Ambulatory Care Clinic unless specifically distinguished.

[2] *See Concerning State Taxation of Individuals Working At Certain Federal Facilities Straddling State Borders: Hearing on H.R. 1953 Before the Senate Comm. On Governmental Affairs,* 105th Cong. 147 (1997) (statement of Maine Attorney General Andrew Ketterer) ("Ketterer Testimony") ("It is well-established that if this matter were presented to the Supreme Court, which has original jurisdiction over boundary disputes be-

New Hampshire invokes this Court's original and exclusive jurisdiction because it is the only way that New Hampshire can protect its historic rights of sovereignty over Portsmouth Harbor, its only seaport,[3] and because New Hampshire has no other recourse available to it to contest the prescriptive claim asserted by Maine to a boundary located in the middle of the main channel of Portsmouth Harbor. The absence of any other method or forum for resolution of the long standing boundary dispute between the states of New Hampshire and Maine and the sovereign nature of New Hampshire's asserted right warrant the exercise of this Court's original and exclusive jurisdiction.

In various respects, the Navy has historically treated the Shipyard as located in New Hampshire, in part because Portsmouth Harbor has been regarded as located entirely in the state of New Hampshire[4] and in part because the Shipyard has always been culturally, economically, and politically connected to New Hampshire. Since the colonial period, New Hampshire and the city of Portsmouth have exercised author-

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[2] *Cont.*
tween states, the Court would first determine how the states themselves have, over time, acquiesced in and agreed upon the location of the boundary, and only if there was no such acquiescence would the Court then look to the original intent of the colonial grants. In this matter, it is clear that the State of New Hampshire has acquiesced in and agreed upon the location of the boundary in the middle of the main navigational channel.").

[3] *See* U.S. Engineer Office, *Preliminary Examination of Portsmouth Harbor, N.H.* (Dec. 10, 1909), *reprinted in Letter from The Secretary of War,* H.R. Doc. No. 61-1086, at 3 (1910). ("Portsmouth Harbor, N.H., is, in reality, the Piscataqua River from its mouth to the wharves in the city of Portsmouth, a distance of about 5 miles."). The boundary dispute between Maine and New Hampshire concerns the inner portion of Portsmouth Harbor and tidal portion of the Piscataqua and Salmon Falls Rivers, including the Shipyard, which comprised the colonial Port of Piscataqua (sometimes called the Port of New Hampshire).

[4] *See* Map Lodging, Map Nos. 1-13. (Maps included in the Lodging are hereinafter referred to as "Map No."). Three reference maps (Map Nos. 43-45) included in the Lodging display place names and depict the harbor and shipyard before and after 1800.

ity and responsibility over nautical regulation, quarantine, and harbor improvements in Portsmouth Harbor and have provided municipal and other services to the Shipyard and naval personnel with little or no protest from Maine.

Recently, in response to complaints by New Hampshire concerning its recognition of Maine jurisdiction, the Navy has advised New Hampshire that it remains neutral in the boundary dispute and will abide by a final competent determination of the location of the boundary. Nevertheless, as an administrative matter in recent years, the Navy has increasingly treated Maine as the state with jurisdiction. By law, the state in which a federal naval facility is located has certain limited jurisdiction which may be exercised concurrently with that of the federal government. For various reasons, including the Navy's recent program to lease certain areas of the Shipyard to private companies, and the Navy's assistance in enforcing state income tax judgments against Shipyard employees, the jurisdictional conflict with respect to the Shipyard has become increasingly important.[5] Because the exercise of jurisdiction on the shipyard islands is dependent on the federal government's cooperation, New Hampshire is not able to maintain its historic connections to the Shipyard without judicial assistance.

The state of New Hampshire has notified the state of Maine that it protests Maine's exercise of its jurisdiction to a claimed prescriptive boundary in Portsmouth Harbor. In 1994, the New Hampshire General Court confirmed New Hampshire's historic claim of sovereignty and dominion by enacting an act which declares that:

> Jurisdiction and control over the whole of the Piscataqua River is and always has been entirely within the county of Rockingham and this state.... Complete dominion and ownership of the tidal waters and submerged lands of

[5] Larry Favinger, *Navy to review lease proposals*, Portsmouth Herald, Feb. 12, 2000, at A7, (February 14, 2000 is the final day for submitting proposals for leasing fourteen buildings, two berths, and one dry dock at Portsmouth Naval Shipyard).

> the whole of the Piscataqua River, and including its Portsmouth Harbor, are solely vested in the sovereign people of the state of New Hampshire, encumbered only by the national navigational servitude over the river and its harbor as a navigable inland waterway and arm of the sea.

An Act Directing the Attorney General to Pursue Settlement of the Portsmouth, New Hampshire Naval Shipyard ... Dispute, ch. 264, 1994 N.H. Laws 297-98 ("Settlement Act") (App. at 32a). More recently, the New Hampshire Attorney General has notified the Maine Attorney General that New Hampshire protests Maine's assertion of jurisdiction to a claimed prescriptive boundary in Portsmouth Harbor. Despite New Hampshire's notice and formal protest, the state of Maine continues to assert that it has the right to exercise jurisdiction over Portsmouth Harbor to the middle of the main or deepest channel, including concurrent state jurisdiction at the Shipyard.

SUMMARY OF ARGUMENT

In a request to accept original jurisdiction, this Court considers the nature of the interests involved and whether another forum is available to adjudicate the dispute. This dispute between New Hampshire and Maine concerns the location of their boundary and implicates sovereign interests of the most serious character, which can be resolved only by this Court.

ARGUMENT

I. THIS COURT SHOULD EXERCISE ITS ORIGINAL JURISDICTION.

The state of New Hampshire asks that this Court exercise its jurisdiction to hear and adjudicate New Hampshire's asserted right to a legal and historic eastern boundary along the Maine shore in the inner portion of Portsmouth Harbor and to hear and adjudicate New Hampshire's challenge to Maine's claim to a prescriptive boundary at the midpoint of the main channel of the Piscataqua River. While this Court

is not mandated to exercise original and exclusive jurisdiction, there are few controversies that come before this Court that have a stronger hold on heritage and tradition than the adjudication of a state boundary.[6]

The long standing and continuing boundary dispute between the states of New Hampshire and Maine raises serious and substantial issues of state sovereignty. The location of the boundary between New Hampshire and Maine through the inner portion of Portsmouth Harbor has never been determined by judicial judgment or by interstate compact.[7] If this Court were not willing to exercise jurisdiction to resolve the disputed boundary, the questions would persist indefinitely; and the passage of time would result in an assertion of prescription by the state successfully exercising jurisdiction in the contested area, regardless of the historical or legal justice of the claim.[8] The issues concerning the location of New Hampshire's eastern boundary with Maine are historically complicated and require for their resolution a fully developed record to permit an accurate construction of the relevant instruments and evaluation of the significance of the various claims to jurisdiction.[9]

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[6] *See Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992) (The prudential test developed by the court to cull cases that are not appropriate for the exercise of original and exclusive jurisdiction considers two factors: 1) whether the interests are sovereign in nature, and 2) whether there is another forum available to the state to protect its interests.).

[7] In 1977 this Court entered a consent decree stipulating to the location of the lateral marine boundary running seaward from a point at the mouth of the inner harbor in the vicinity of Fort Point and Fishing Island. *New Hampshire v. Maine*, 434 U.S. 1 (1977). This Court entered the consent decree without making any findings of its own on the underlying facts or legal principles. *See New Hampshire v. Maine*, 426 U.S. 363, 369 (1976) ("[W]e … see no reason not to give [the proposed consent decree] effect, even if we would reach a different conclusion upon the same evidence"). Therefore, the 1977 consent decree is not dispositive of any issue in this case. *See United States v. Int'l. Bldg. Co.*, 345 U.S. 502, 506 (1953).

[8] *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657, 726 (1838).

[9] *Rhode Island v. Massachusetts*, 39 U.S. (14 Pet.) 210, 257 (1840).

Maine's claim that a boundary in the middle of the main channel on the New Hampshire side of the shipyard islands has been established by prescription cannot be summarily adjudicated. As the proponent of a prescriptive boundary, Maine must establish by a preponderance of the evidence that it has engaged in affirmative acts demonstrating a "long and continuous possession of, and assertion of sovereignty" over Portsmouth Harbor and the shipyard islands and that New Hampshire knew of Maine's acts and assented to them.[10]

The facts alleged in the complaint show that Maine has not engaged in a course of action sufficient to establish its sovereignty over the harbor or the shipyard islands and that New Hampshire has not acquiesced in Maine's asserted boundary claim. New Hampshire has continuously operated, regulated and taken responsibility for the development and improvement of the inner portion of Portsmouth Harbor from the colonial period up to the present.[11] Custom and usage, state statutes and ordinances, and maps and maritime directions all reflect that the state of New Hampshire controlled and regulated Portsmouth Harbor to the Maine shore. Likewise, prior to the acquisition of the shipyard islands by the United States, New Hampshire occupied the islands for the defense of the Port of Piscataqua, and constructed ships, including the America and the Ranger on Badger's Island.[12]

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[10] *New Jersey v. New York*, 523 U.S. 767, 786 (1998); *Illinois v. Kentucky*, 500 U.S. 380, 384-385 (1991); *Georgia v. South Carolina*, 497 U.S. 376, 389 (1990); *Arkansas v. Tennessee*, 310 U.S. 563, 570 (1940); *Vermont v. New Hampshire*, 289 U.S. 593, 613 (1933); *Louisiana v. Mississippi*, 202 U.S. 1, 53 (1906); *Virginia v. Tennessee*, 148 U.S. 503, 522-524 (1893). Because acquiescence presupposes knowledge, the state asserting prescription and acquiescence is bound to present either direct evidence that the opposing state had knowledge that the proponent state acted upon a claim to the disputed territory, or evidence of such open, notorious, visible and uninterrupted adverse acts that knowledge and acquiescence may be presumed. *New Jersey v. New York*, 523 U.S. at 787.

[11] *See, e.g.*, Map Nos. 1-13.

[12] 2 William Douglas, *Summary, Historical and Political, Of the First Planting, Progressive Improvements, and Present State of The British Settlements in North-America* 51 (1752) ("Their [the province of New

After the United States acquired the islands, the Navy operated the Shipyard as if it were politically, economically and culturally part of the state of New Hampshire.

As alleged in the Complaint, in recent years, the boundary dispute between New Hampshire and Maine has become pressing due to the United States government's leasing of Shipyard property to private developers, the state of Maine's exercise of concurrent jurisdiction, particularly in environmental matters, at the Shipyard, and the United States Navy's attempt to sever many of the ties that have bound the Shipyard to New Hampshire for two centuries. United States Senator Smith of New Hampshire has asked the Secretary of the Navy to reverse administrative decisions that require the application of Maine law to various matters involving the Shipyard, and has introduced an amendment to legislation to exempt New Hampshire civilians who are employed at the Portsmouth Naval Shipyard from liability for Maine's purported state income tax claims. At the Senate Hearings in 1997 on Senator Smith's amendment to H.R. 1953, Senator Collins of Maine stated repeatedly that the boundary dispute between New Hampshire and Maine belonged in the Supreme Court, not in Congress.[13] The Navy has also declined to reverse its own administrative decisions that place the Shipyard in Maine for certain purposes, stating that it would not judge a disputed boundary.[14]

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[12] *Cont*

Hampshire's] manufactures are shipbuilding, lately a good first rate man of war called the *America* was built there."). The *America* was constructed on and launched from Badger's Island.

[13] *See Concerning State Taxation of Individuals Working At Certain Federal Facilities Straddling State Borders: Hearing on H.R. 1953 Before the Senate Comm. on Governmental Affairs*, 105th Cong. 4, 37 (1997) (statements of Susan Collins, Senator of Maine). "[B]order disputes are properly resolved before the Supreme Court, Mr. Chairman, not in legislation before Congress." *Id*. "Obviously, we could go on and on on this issue. I think it shows so clearly why this belongs in the Supreme Court and not in Congress. The dispute belongs in the Supreme Court and not in Congress." *Id*.

[14] Letter from H. Lawrence Garrett, III, Secretary of the Navy to Senator Robert C. Smith (August 6, 1990) (on file with Senator Robert Smith's Office).

By its motion, the state of New Hampshire asks that this Court permit it to develop and present a full, factual record that will demonstrate both that Maine has not acquired a right to a prescriptive boundary in Portsmouth Harbor and that New Hampshire has a legal and historic right to a boundary located at the low water mark of the Maine shore.

II. NEW HAMPSHIRE'S BOUNDARY CLAIM IS SERIOUS AND SUBSTANTIAL.

New Hampshire is prepared to present substantial historical and legal evidence to support its claim to an eastern boundary on the shore of Maine. New Hampshire's evidence includes maps as well as historical documents confirming New Hampshire's exercise of jurisdiction over the Port of Piscataqua, including all of Portsmouth Harbor.[15] Evidence that New Hampshire operated, regulated and controlled the Piscataqua River and the Port of Piscataqua is legally significant in ascertaining the location of the boundary because it is the best evidence of the actual jurisdictional boundary during the colonial period, and establishes New Hampshire's succession to the governmental and proprietary rights of Great Britain to the Port at the Revolution. After the Revolution, New Hampshire's authority to regulate and control the Portsmouth Harbor were coextensive with its proprietary rights to the subsoil underlying Portsmouth Harbor.[16] *Pollard's Lessee v. Hagan*, 11 U.S. (3 How.) 212, 230 (1845) ("The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the states respectively.").

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[15] *See, e.g.,* Map No. 8.

[16] Unlike the lateral marine boundary case between New Hampshire and Maine previously before this Court, in which the Special Master discounted evidence of custom and usage on the ground that jurisdiction over the open sea was not based on "actual ownership," the instant case involves inland waters, where state jurisdiction is coextensive with the state's territory. *See United States v. Bevans,* 16 U.S. (3 Wheat.) 336, 387 (1818). *Cf.* Special Master's Report, *New Hampshire v. Maine,* No. 64, Orig., 1, 47 (Oct. 8, 1975) ("Special Master's Report").

During the colonial period, the Port of Piscataqua included the entire navigable portion of the Piscataqua River on both sides of the shipyard islands and extended to Berwick, Maine. The port was part of the Province of New Hampshire and was governed and administered by New Hampshire officials. All ships entering and leaving the harbor paid provincial duties to the New Hampshire treasurer or other provincial officials under authority of New Hampshire provincial statutes.[17] The customs collector appointed for the province collected parliamentary trade duties, and all ships were required to clear the New Hampshire customs house as shown by the New Hampshire shipping returns.[18] Vessels owned on both sides of the river were registered in New Hampshire according to the New Hampshire colonial naval office shipping lists.[19] A pass signed by the New Hampshire governor or lieutenant governor was required for any vessel to leave the harbor. (*See* photocopy of form of Let-pass, Port of Piscataqua, c. 1731) (App. at 51a).

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[17] *See* An Act About Powder Money, ch. 6, 2 N.H. Laws 257 (1718) (App. at 3a); An Act For Establishing & Keeping A Light At The Light-House At Fort William & Mary Within This Province, ch. 3, 3 N.H. Laws 623 (1774) (App. at 12a). The New Hampshire provincial governors were repeatedly instructed to collect the provincial powder duty, which was due on all ships entering the harbor. *See, e.g.,* Instructions to Governor Benning Wentworth, 2 N.H. Laws 608, 629, (1741) (App. at 34a).

[18] The New Hampshire naval officer regularly signed the shipping returns for all vessels entering and leaving the Piscataqua, and the returns were transmitted to London by the Governor of New Hampshire under the provisions of An Act for regulateing the Plantation Trade, 22 & 23 Car. 2, ch. 26, §7 (1670-71) (Eng.) (App. at 39a). The trade instructions to New Hampshire governors, implementing this Act, required them to transmit lists of all vessels "trading in the said province [i.e., New Hampshire]." *See* Trade Instructions to Governor Benning Wentworth, 3 N.H. Laws 281, 293-94 (1761) (App. at 35a).

[19] Vessels were required to be registered by the Governor and customs officer residing in the province to which they "belong." An Act for preventing Frauds and regulating Abuses in the Plantation Trade, 7-8 Will. 3, ch. 22, §16 (1695-96) (Eng.) (App. at 41a). *See also,* Trade Instruction to Governor Benning Wentworth, 3 N.H. Laws 281, 293-94, 298-99 (1761) (App. at 35a).

In 1770, Rockingham County, New Hampshire, was statutorily established and defined "to begin at the mouth of Piscataqua River, and to run up the same to the easterly corner of Newmarket, including the river." This description includes the entire harbor. New Hampshire has reenacted this county definition in subsequent statutory enactments.[20] By contrast, York County, Maine, was statutorily established in 1652 as that "tract of land beyond the Piscataq[ua]."[21] As shown below, except for the addition of land to the east, the present day state of Maine is coextensive with ancient York County.

New Hampshire's Fort William and Mary, subsequently renamed Fort Constitution, located on Fort Point, exclusively controlled access to the inner portion of Portsmouth Harbor during the colonial, Revolutionary, and Confederation periods. During the Revolution and Confederation periods, as well as the War of 1812, the New Hampshire government used Fort Constitution and Fort Sullivan, which was located on Seavey's Island, to defend the harbor and to enforce New Hampshire controls on the passage of vessels in and out of the harbor and to collect New Hampshire duties on shipping.[22] A map of the state of New Hampshire published in 1791 by

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[20] An Act For Dividing This Province Into Counties, ch. 9, 3 N.H. Laws 524-525 (1769) (App. at 6a) (confirmed by King in Council in 1770); An Act Declaring The Limits And Boundaries Of The Several Counties In This State, ch. 14, 5 N.H. Laws 766 (1791) (App. at 24a); Rev. Stat. Ann. 22:2 (1988).

[21] York Deeds, Book I, pt. I, Folio 26 ("1: That the Whoole Tract of Land beyond the River of Pischataq Norethwardly togeather, with the Yle or Yles of Shooles within our sd bounds, is & shall be hence forth a County, or shire, Cauled by the Name of Yorke Shire.").

[22] *See Historical Register and Dictionary of the United States Army,* H.R. Doc. No. 57-446, at 549 (1903) (referring to Fort Sullivan as "Fort Sullivan, N.H. on Trepethen [Seavey's] Island."); *see also* Nat'l Oceanic and Atmospheric Admin., *National Geodetic Survey Designations,* OC2273, OC2274 (visited March 22, 1999) <http://www.ngs.noaa.gov/cgi-bin/ds2.pvl> (describing geodetic markers at Ft. Sullivan and the Portsmouth Navy Yard Standpipe as located in Rockingham County, New Hampshire); Map Nos. 9 and 10.

Jeremy Belknap, New Hampshire's most famous historian, shows the boundaries of Rockingham County as including the shipyard islands and the entire inner portion of Portsmouth Harbor.[23]

New Hampshire's legal and historical claims are serious and substantial and are based on credible historical evidence. New Hampshire is prepared to submit testimony of expert scholars, including Professor Charles Donahue of Harvard Law School, Professor Emeritus Charles Clark of the University of New Hampshire, and Professor Paul Halliday of Union College, concerning, among other things, the historical background relating to the exercise of various aspects of British governmental powers in ports, the territorial extent of the Port of Piscataqua and the legal and historical significance of the Port's connection with the province and state of New Hampshire.

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[23] *See* Map No. 33. The maps of the early statehood period, which have been lodged with the court, show variant boundaries. A map prepared by Samuel Lewis formed the basis for many other maps of the state of New Hampshire published in popular atlases, including the B. Tanner Atlas published by John Reid. Reid published the maps used in the first census. These maps show a boundary along the Maine shore. *See* Map Nos. 34 and 35. A map prepared by Philip Carrigain (Map No. 37) and authorized by the New Hampshire General Court, first published in 1816, shows the boundary dividing the harbor and leaves the shipyard islands in Maine. With respect to the Carrigain map, it should be noted that Carrigain was not a surveyor, and that his map was based on individual town maps prepared under legislative direction. *See* An Act To Cause The Several Towns, Parishes And Places Within This State To Be Surveyed, ch. 53, 7 N.H. Laws 249 (1803) (App. at 29a). The Portsmouth and New Castle map on which the Carrigain map was based (Map No. 36), prepared by the surveyor Phineas Merrill, does not show any boundary in Portsmouth Harbor. The boundary line as shown on the Carrigain map contains at least one other error which casts doubt on its reliability, *viz.*, it shows the line running over land across the peninsula between the Cocheco and Salmon Falls River, no part of which had ever been claimed by Massachusetts.

III. NEW HAMPSHIRE'S EASTERN BOUNDARY WITH MAINE EXTENDS TO THE LOW WATER MARK OF THE MAINE SHORE THROUGH PORTSMOUTH HARBOR.

New Hampshire bases its boundary claim on the annexation of the Port of Piscataqua to the royal province of New Hampshire during the British colonial period, the exclusion of the port and the Piscataqua River from the 1691 grant to the charter colony of Massachusetts Bay, the exercise of jurisdiction over the harbor and river by the New Hampshire governor under Commissions and Instructions issued by the Crown, a 1740 Boundary Decree respecting the boundaries between Massachusetts and New Hampshire, the statutory definitions of Rockingham County, New Hampshire, and York County, Maine, and the exercise of jurisdiction over the Port of Piscataqua by New Hampshire as successor to the British crown after its declaration of independence from Great Britain, as supplemented and confirmed by evidence of custom and usage.

The bounds of Rockingham County correspond with the Province of New Hampshire's historic exercise of governmental rights and jurisdiction over the Port of Piscataqua and fit precisely with the geographical description of York County, Maine. The definition of York County, Maine, derives from an act of the General Court of the old colony of Massachusetts Bay in 1652, which provided that, "the whole tract of land beyond the river of Piscataq northerly is and shall be henceforth a county, or shire, called by the name of Yorkeshire."[24] In 1760, while Maine was part of Massachusetts, Yorkshire was divided into three counties by a provincial act which made no change in the boundary of York County along the Piscataqua River.[25] Subsequently, after indepen-

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[24] York Deeds, *supra*.

[25] An Act for Erecting and Establishing two new Counties, ch. 7, § 1, 4 Acts & Resolves Public and Private of the Province of Massachusetts Bay 372 (1760) (App. at 38a). A county map of Massachusetts prepared by John Warnicke in the early 1800s shows the boundaries of York County as running along the Maine shore. *See* Map No. 39.

dence, the District of Maine was established as composed of the three counties previously comprising Yorkshire County, and the District later became the State of Maine.[26] The historical definition of Maine's western boundary remains unchanged.[27] As the Maine Supreme Court has held, "Whatever changes have been made in the boundaries of York county or Shire must appear in subsequent legislation, an examination of which shows that the western and southern boundaries have always remained the same...."[28] *State v. Wagner*, 61 Me. 178, 187-188 (1873).

New Hampshire's exercise of governmental jurisdiction over the Port of Piscataqua is significant with respect to both the statutory description of Rockingham County and the judicial concept of a port in 18th century English law. At that time, the territorial extensiveness and unity of a port were implicit in the conjunction of prerogative, public and franchise interests in a port. Sir Matthew Hale, writing near the end of the 17th century, enumerates the king's prerogatives with respect to a port as including the power to shut people and things out of the port for the safety of the kingdom, the defense of the port, and restrictions on shipping in aid of collecting customs.[29] All of the royal prerogatives with respect to the Port of Piscataqua were exercised by the New Hampshire government directly, or by Crown officers appointed for New Hampshire, as shown below. New Hampshire also protected the pub-

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[26] *See* Act For The Admission Of The State of Maine Into The Union, ch. 19, 3 Stat. 544 (1820).

[27] *See, e.g.*, Map No. 40, Moses Greenleaf map of the state of Maine, 1829.

[28] *But see* 3 Me. Rev. Stat. Ann. tit. 15, § 4 (1964) (generally defining the lines of counties terminating at or near tidewaters to run by the principal channel and to include islands).

[29] Sir Matthew Hale, *De Portibus Maris, in A Collection of Tracts Relative to the Law of England*, 72, 89-105 (Francis Hargrave ed., 1787). Hale's definition of "port" emphasizes the confluence of natural, commercial and legal features that comprise a port, and notes that a port often takes in a substantial stretch of river beyond the place of loading and unloading. *Id.* at 46-47 (App. at 50a).

lic rights in the port,[30] including the right of access to the port (as by maintaining a light at the harbor entrance[31]), and the right that the harbor be kept free from obstructions to navigation (by prohibiting dumping ballast in the harbor[32]). Under English law, a strong presumption existed against severance of title to the subsoil from the prerogative, except by the most explicit grant: "[A]s ... lands covered with salt water belonge to the Kinge *prima facie*, so much more if they ly within ports."[33] Thus, as the colony of Massachusetts had no governmental powers in the port and no grant of the tidal subsoil, there can be no inference that its territory included any part of the port.

From 1679, when New Hampshire was established as a royal province to the Revolution, the Port of Piscataqua operated as an undivided legal and juridical entity with governmental jurisdiction over the Port exercised exclusively by British officials appointed for the Province of New Hampshire, and by the New Hampshire governor, council and assembly acting pursuant to royal commissions and instructions. Through the colonial period, New Hampshire officials enforced the parliamentary navigation laws, which required the registration of ships in the province to which they belonged, the clearance of all ingoing and outgoing ships trading with the province, the collection of duties, and the inspection and seizure of vessels. New Hampshire governors appointed naval officers for the province, who kept shipping registers, required bonds for outgoing shipping as security for delivery to a per-

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[30] *See id.* at 83-88.

[31] An Act For Establishing A Light To Be Kept At Ft. William And Mary, ch. 16, 3 N.H. Laws 555 (1771) (App. at 7a); An Act ... For Establishing A Light To Be Kept At Ft. William And Mary, ch. 7, 3 N.H. Laws 572-73 (1772) (App. at 8a); An Act ... For Establishing A Light To Be Kept At Ft. William And Mary, ch. 18, 3 N.H. Laws 594-95 (1773) (App. at 10a).

[32] Acts Of The Assembly In Portsmouth, 1 N.H. Laws 33 (1680-81) (App. at 2a).

[33] Sir Matthew Hale, *A Narrative Legall and Historicall Touchynge the Customs, in* Stuart A. Moore, *A History of the Foreshore and the Law Relating Thereto* 319, 345 (3rd ed. 1888).

mitted port, and seized illegally imported goods. All shipping into and out of the port was required to clear at the customs house, which was at New Castle and later in Portsmouth, New Hampshire. The New Hampshire government was also charged with defense of the harbor, and collected powder duty and light money (for maintenance of the lighthouse) from all shipping entering the harbor at Fort Point, under the authority of statutes passed by the New Hampshire Council and Assembly. On at least one occasion, the New Hampshire Council and Assembly enacted a temporary shipping embargo.[34] At the Crown's direction, New Hampshire exercised the full panoply of governmental powers with respect to the Port of Piscataqua.

The charter colony of Massachusetts, on the other hand, never received any rights in the Piscataqua River or Harbor, whether by grant of subsoil, franchise, or delegation of governmental authority. With respect to proprietary rights to the Port of Piscataqua, any grant to Massachusetts must derive from the 1691 charter, under which it was governed until the Revolution. In that charter, the province of Maine is defined as including:

> "…all that part or porc̃on of Main Land beginning at the Entrance of Pescata way Harbour and soe to pass upp the same into the River of Newickewannock and through the same into the furthest head thereof and from thence Northwestward, till One Hundred and Twenty Miles be finished and from Piscata way Harbour mouth aforesaid North-Eastward along the Sea Coast to Sagadehock and from the Period of One Hundred and Twenty miles aforesaid to crosse over Land to the One Hundred and Twenty miles before reckoned up into the Land from Piscataway Harbour through Newickawannock River and alsoe the North halfe of the Isles and Shoales …

[34] An Act For Laying An Embargo Upon Ships & Other Vessels In This Province, ch. 14, 3 N.H. Laws 182 (1758) (App. at 4a).

> and alsoe all Islands and Isletts lying within tenn Leagues directly opposite to the Main Land within the said bounds....”[35]

See 3 Thorpe, Federal and State Constitutions 1870, 1886 (1909) (emphasis added). Not only does the express language seem to exclude Piscataqua Harbor from the grant, but such charters were construed to reserve title to boundary waters and the subsoil thereof to the crown, as in the case of the Delaware river between Pennsylvania, Delaware and New Jersey. *See New Jersey v. Delaware,* 291 U.S. 361, 378 (1934); 1 George Chalmers, *Opinions of Eminent Lawyers on Various Points of English Jurisprudence* 59-60 (1814).

With respect to governmental jurisdiction, no Massachusetts official was ever assigned authority to regulate the Piscataqua River or Harbor, nor was Massachusetts allowed to set up a port there. Under an Act ... for the better Securing the Plantation Trade, 25 Car. 2, ch. 7 (1672) (Eng.) (App. at 40a), the “whole business” of customs regulation in the colonies “shall be ordered and managed” by His Majesty’s Customs Commissioners. This statute was interpreted to give the customs commissioners exclusive authority to designate ports.[36] Thus, on one occasion when Massachusetts attempted to appoint a naval officer to receive clearances on vessels loading and unloading at Kittery instead of the New Hamp-

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[35] The 1691 Charter describes the eastern boundary of Maine as beginning at the Sagadehock River and crossing land one hundred and twenty miles to meet the eastern boundary of New Hampshire. New Hampshire’s eastern boundary started at the Piscataqua Harbor and ran 120 miles north. Under this description, Maine’s eastern boundary controlled the location of the northern portion of New Hampshire’s eastern boundary. See Map Nos. 24 and 25, and 19 N.H. Provincial Papers 416 (Albert Stillman Batchellor, ed., 1891) (“... there appears to be a whole line of the bounds of Gorges’ grant left out of the Charter....”).

[36] *See Proclamation by the Earl of Bellomont [Governor of New York] for maintaining ye Port of New York in its privileges against the Jarzies [Jerseys],* (May 24, 1698), *reprinted in* 2 *Documents Relating to the Colonial History of the State of New Jersey,* 218 (William A. Whitehead ed., 1881).

shire naval officer, the Lords of Trade ordered repeal of the Act as impermissible under the statute of 25 Car. 2.[37]

Following its declaration of independence, New Hampshire asserted its exclusive jurisdiction over the harbor as an independent state by maintaining or replacing all the statutes and governmental offices by which the Port of Piscataqua had been governed and administered during the colonial period with state statutes and state officials. In 1775, the Portsmouth Committee on Fortifications, under direction from the New Hampshire Committee of Safety, took charge of troops at Great Island, including Fort Point to control access to the Harbor. Shortly thereafter, New Hampshire constructed batteries on Seavey's Island (where the Shipyard is now located), on Pierce's Island, and at Battery Hill, and authorized officers of the New Hampshire militia to take command of these fortifications.[38] The Committee of Safety placed a boom across the Narrows and garrisoned Fort Sullivan on Seavey's Island to control shipping, and sank the prize ship the "Prince George" in Crooked Lane to block passage in the other shipping channel. One of the earliest acts of the independent New Hampshire House of Representatives was to designate a maritime officer for the Port of Piscataqua, who took over the authority previously exercised by the colonial naval officer and who later was called New Hampshire's naval officer.[39]

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[37] *See* Minutes of Lords of Trade and Plantations (June 4, 1695), *excerpt printed in* 14 Calendar of State Papers – Colonial Series 497-98, entry no. 1874 (J.W. Fortescue ed., Kraus Reprint Ltd. 1964) (1903).

[38] *See* Letter from New Hampshire Provincial Congress to New Hampshire delegates in Continental Congress (undated, 1775), 7 N.H. Provincial Papers 500 (Nathaniel Bouton ed., 1873) (New Hampshire troops now at Kittery Point, if given sufficient ammunition, could command "our harbor"); Map No. 6.

[39] Journal of the New Hampshire House of Representatives (July 5, 1776), 8 N.H. State Papers 194 (Nathaniel Bouton ed., 1874). *See* An Act To Preserve The Fish In Piscataqua River, ch. 6, 4 N.H. Laws 350 (1781) (App. at 18a); An Act To Alter And Extend The Act About Powder Money, ch. 13, 4 N.H. Laws 557 (1784) (App. at 19a); An Act ... For Establishing A Light House ..., ch. 20, 5 N.H. Laws 35-36 (1784) (providing for collection of lighthouse duties by the Naval Officer on all vessels over

The new maritime officer promptly communicated to the House of Representatives that he was continuing to collect fees from ships passing Fort Point, "because the authority of the Forts should be kept up and a proper submission made to them."[40]

From 1776 to 1789, when the federal Judiciary Act was enacted, the New Hampshire admiralty court exercised maritime jurisdiction over the Port of Piscataqua.[41] On April 9, 1777, the New Hampshire General Court confirmed that all pre-Revolutionary Acts not inconsistent with the new political situation remained in force and that fines and forfeitures were to be allocated to the county in which they were collected. Various laws relating to the Port of Piscataqua were thereby ratified, including laws regulating fishing and the dumping of ballast in the Piscataqua River. Subsequently, new legislation was passed governing various activities in the harbor and river. Massachusetts did not purport to exercise its jurisdiction or assert any territorial claims in the harbor. In 1778, the New Hampshire General Court passed a navigation act, essentially replacing the parliamentary navigation acts under which the New Hampshire naval officer had functioned during the colonial era, and formally established a Naval Office that controlled all vessels entering and clearing the Port and collected fees for the use of the Port of Piscataqua. An Act For Establishing a Naval Office At Portsmouth ...., ch. 14, 4 N.H. Laws 184 (1778) (App. at 14a).[42]

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[39] *Cont.*
a certain tonnage coming into the harbor) (App. at 20a); An Act For Regulating Pilotage In The Port of Piscataqua, ch. 5, 5 N.H. Laws 73 (1785) ("Pilotage Act") (App. at 21a).

[40] Letter from Eleazer Russell (Sept. 9, 1776), 8 N.H. State Papers 363 (Nathaniel Bouton ed., 1874).

[41] After the enactment of the Judiciary Act in 1789, the District Court for the District of New Hampshire referred to the Port of Portsmouth as being within the District of New Hampshire.

[42] In 1782, Eleazer Russell, then the New Hampshire Naval Officer, wrote to the President of New Hampshire that New Hampshire had always possessed jurisdiction over the river, but lately some residents of Kittery and Berwick had been claiming a right to pass on the opposite

In 1784, the New Hampshire House of Representatives memorialized the importance of New Hampshire's only port when it appointed a Committee to form a Proper Device for a Public Seal for the State. On November 1, 1784, the Committee reported that "a rising sun and a Ship on the Stocks with American banners displayed" should appear on a two-inch die. Since 1785, the seal displayed on New Hampshire's flag has depicted the frigate "Raleigh" on the stocks in Portsmouth Harbor during its construction.[43] *See* N.H. Rev. Stat. Ann. 3:9 (1988) ("across the field for the full width within the laurel a broadside view of the frigate Raleigh, on the stocks"). Contemporaneous documents refer to the Raleigh as New Hampshire's frigate, as distinct from the Massachusetts frigates with which it sailed.[44]

At the time of its ratification of the United States Constitution in 1787, New Hampshire had unambiguously exercised exclusive jurisdiction over the Port of Piscataqua through its control and governance of defense, navigation, customs, fish-

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[42] *Cont.*
side of the river without complying with New Hampshire law, a claim which he had resisted. In response, the New Hampshire House of Representatives resolved that the Naval Officer collect fees for vessels entering and clearing the harbor, and that the company stationed at Fort Point and other places for defense of the harbor be increased. Letter from Eleazer Russell to Meshech Weare (June 10, 1782), 18 N.H. State Papers 716, 717 (Isaac W. Hammond ed., 1890); Journal of the House of Representatives (June 14, 1782), 8 N.H. Provincial Papers 941 (Nathaniel Bouton ed., 1874). Subsequently, the New Hampshire Council affirmed the right of the President to demand all ships coming into the harbor to call on him with their papers. Record of the President and Council (1785), 20 N.H. State Papers 554-555 (Albert Stillman Batchellor ed., 1891).

[43] Otis G. Hammond, *History of the Seal and Flag of the State of New Hampshire* 31 (1916) (published by Order of the Governor and Council of the State of New Hampshire).

[44] *See, e.g.,* Resolution of N.H. House of Representatives, 8 N.H. State Papers 323 (Nathaniel Bouton ed., 1874) (recommendation to Mr. Langdon, "agent for the continental frigate now at Portsmouth" that he equip the vessel to sail "with one of the continental frigates in the Massachusetts Bay and other of their colony armed vessels").

ing, and admiralty. These comprise the rights of government that the crown had exercised in the harbor and river directly and through the New Hampshire provincial government, and they constitute the full panoply of those *jura regalia* or rights and powers which governments exercised in that era with respect to ports. By actual occupation, as well as in formal continuance of the provincial government, the state of New Hampshire succeeded to the rights of the British crown as sovereign over the area of the port, which included the entire inner harbor and navigable river. Along with the rights of government, the title to the tidal subsoil ceded by the crown in the Treaty of Peace, signed at Paris September 3, 1783, passed to the respective successor state; "title, jurisdiction, and sovereignty, are inseparable incidents ...." *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) at 733. When New Hampshire entered the union, its boundaries included the harbor and navigable river constituting the Port of Piscataqua.

IV. DETERMINATION OF MAINE'S PRESCRIPTIVE CLAIM REQUIRES A FULLY DEVELOPED FACTUAL RECORD.

Maine's claim to a prescriptive boundary in Portsmouth Harbor raises legal and factual issues that cannot be summarily decided.[45] New Hampshire's history of regulation and control over its only deep water harbor, "Portsmouth Harbor, N.H.," calls into question Maine's assertion of a prescriptive claim to a boundary that, if confirmed, would place over half of "Portsmouth Harbor, N.H." in the state of Maine. The federal government's practice of treating the Shipyard as if it were part of New Hampshire, and the federal government's identification and treatment of Portsmouth Harbor as a single, undivided geographical entity located wholly within

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[45] *United States v. Texas*, 339 U.S. 707, 715 (1950) ("The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts.").

the state of New Hampshire factually and legally refute Maine's prescriptive claim.[46]

Following ratification of the U.S. Constitution, the U.S. government took over the lighthouse and Fort Constitution and assumed jurisdiction over customs and certain aspects of navigation. The state of New Hampshire continued to regulate such matters as pilotage, ship traffic, and quarantine as it had done prior to its ratification of the constitution.[47] New Hampshire also continued to enact and enforce laws regulating waste disposal, pilotage, fishing and quarantine in Portsmouth Harbor,[48] and delegated the power to the town of Portsmouth to appoint the harbormaster and health officer[49] for the port, and to enact and enforce ordinances regulating the use of the harbor. Between 1805 and 1896, the Portsmouth Gazette published Portsmouth's quarantine regulations on sixty-six different occasions. Quarantine was customarily performed in Pepperell Cove, north of the Fishing Islands near the Maine shore. Portsmouth's city ordinance of 1874 directs that ships perform quarantine "in that part of the harbor of Piscataqua lying within a line drawn from Fort Constitution to the north-

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[46] *See, e.g.,* Map No. 8.

[47] For example, the Coast Pilot published by the U.S. Coast and Geodetic Survey during the 19th and 20th centuries lists exclusively New Hampshire laws as governing pilotage, harbor control and quarantine in Portsmouth Harbor:

> **Harbor regulations**. The harbor master of the city of Portsmouth has authority to regulate any controversy among the vessels in the harbor ....
>
> **Quarantine regulations.** The board of health of the city of Portsmouth has jurisdiction over the harbor of Portsmouth ....

U.S. Coast and Geodetic Survey Office, *Coast Pilot* 192 (2nd ed. 1903).

[48] *See, e.g.,* An Act To Prevent Obstructions And Impediments To Navigation In The River Piscataqua And Harbor of Portsmouth, ch. 6, 6 N.H. Laws 12 (1792) (App. at 25a); An Act To Preserve The Fish In Piscataqua River ..., ch. 16, 5 N.H. Laws 349 (1789) (App. at 23a); Pilotage Act, ch. 5, 5 N.H. Laws 73 (1785) (the cruising ground of the port's pilot extends from the harbor's mouth to the eastermost sister) (App. at 21a).

[49] An Act Empowering The Inhabitants Of The Town Of Portsmouth To Appoint Health Officers ..., ch. 13, 6 N.H. Laws 578 (1799) (App. at 27a).

wardmost of the Fishing Islands and a line drawn due west from Wood Island." Portsmouth, N.H., Ordinance Of Quarantine, ch. 11 (1874), *reprinted in* The Compiled Ordinances of the City of Portsmouth, at 76 (1894).

Through the 20th century, New Hampshire has continued to assume operational and financial responsibility for improvements to Portsmouth Harbor, by providing state funds and by assisting federal authorities with planning and construction. Improvements to Portsmouth Harbor have included the removal of a portion of Gangway Rock, the removal of a part of the ledge at the southwest point of Badger's Island and the removal of "Pull-and-be-Damned Point, New Hampshire."[50] As recently as 1991, the state of New Hampshire paid the entire state share, totaling nearly five million dollars, of a federal dredging project to create a turning basin in Portsmouth Harbor.[51] The turning basin extends to the shore of Maine.

V. THE 1740 BOUNDARY DECREE DID NOT DIVIDE THE PORT OF PISCATAQUA.

On April 9, 1740, King George II signed a decree accepting the Boundary Commissioners' Report of 1737 setting the northern (eastern) and southern boundaries of New Hampshire.[52] The 1737 Report of the Boundary Commissioners

[50] The U.S. Army Engineers, in reporting on their work on Pull-and-be-Damned Point, referred to the area as being within New Hampshire. *See Examination of Pull-and-be-Damned Point, Portsmouth, N.H.*, H.R. Doc. No. 56-39, at 1 (1899); *Examination and Survey of Henderson's Point, Portsmouth Harbor, New Hampshire*, H.R. Doc. 56-263, at 1 (1901); *Henderson's Point, Portsmouth, N.H.: Letter From the Secretary of the Navy Relating to the Removal of Henderson's Point at Portsmouth, N.H.*, H.R. Doc. No. 57-243, at 1 (1902); *Administration Building, Naval Prison, Portsmouth, N.H.*, H.R. Doc. No. 59-890, at 1 (1906) (The Naval Prison is located on Seavey's Island).

[51] An Act Making Appropriations For Capital Improvements, ch. 351, 1991 N.H. Laws 557, 562.

[52] *See* Report of His Majesty's Commission ... to Settle Adjust & Determine the Respective Boundaries of the Provinces of the Mass[a] Bay & New Hamp[r] (1737), 19 N.H. Provincial Papers 391-92 (Albert Stillman

includes a plan laying out the boundaries described in the report, which depicts only divisions of land.[53] With respect to the northern boundary, the Report provides as follows:

> … 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 ye River of Newichwannock (part of which is now called Salmon Falls) & thro' the Middle of the Same to the furthest head thereof ….[54]

Following King George II's affirmance of the commissioners' report with respect to the northern boundary, the Crown transmitted to Governor Belcher a plan that depicted the boundaries as determined in the 1740 decree, and instructed Governor Belcher to submit a surveyed map of those boundaries. Using the plan transmitted by the Crown, Walter Bryant surveyed the eastern boundary of New Hampshire, and sent a copy of his survey to the Crown. Bryant's plan does not show a boundary in the Piscataqua River or through the port.[55]

New Hampshire submits that, as used in the decree, the phrase "up the middle of the river" did not divide the Port of Piscataqua. Rather, the title to the soil was understood to be

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[52] *Cont.*
Batchellor ed., 1891) ("1737 Boundary Report") (App. at 42a); Decree of the King in Council (1740), 2 N.H. Laws 790-94 app. (1702-1745) ("1740 Boundary Decree") (App. at 44a). The commissioners were presented with two principal disputes, one involving New Hampshire's southern boundary and the other concerning the northern portion of New Hampshire's eastern boundary with Massachusetts. There does not appear to have been any argument concerning the boundary in Piscataqua Harbor or River. Demands of New Hampshire (1737), *reprinted in* 19 N.H. Provincial Papers 283-84 (Albert Stillman Batchellor ed., 1891).

[53] Map Nos. 18 and 19. No plans prepared in connection with the boundary proceeding show a boundary in the port.

[54] *See* 1737 Boundary Report, *supra*, at 392.

[55] Map Nos. 20 and 21.

directly vested in the Crown and not in either province. After 1740 as before, the government of New Hampshire, together with British officials appointed for that province, exercised exclusive jurisdiction and administrative control over the port.[56] Thus, to construe the 1737 boundary report as dividing the port is historically insensitive and legally unsound; historically insensitive because it conflicts with the custom and usage of the Port of Piscataqua and the Crown's subsequent approbation of the act establishing Rockingham County; legally unsound because it conflicts with English law concerning ports and the jurisdiction and authority of the boundary commissioners.[57] Full consideration of the historical and legal circumstances is required to determine the meaning and continuing validity of the 1740 Decree.[58]

VI. MAINE CANNOT ESTABLISH AN HISTORICAL RIGHT TO A MID CHANNEL BOUNDARY.

Maine cannot claim a legal or historical right to a midchannel or "thalweg" boundary based upon the 1740 boundary decree because the concept of division by naviga-

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[56] Map No. 26. Maps prepared for Massachusetts before and after the 1740 Decree to depict boundary disputes do not show a boundary in the port. Map No. 23 appears to depict the location of the divisional line as understood by Massachusetts. *See also* 19 N.H. Provincial Papers 413 (Albert Stillman Batchellor ed., 1891) (Opinion of Dr. Halley Astr Reg).

[57] The Plantation Trade Act, 25 Car. 2, which was understood to repose sole authority to designate ports in the Customs Commissioners, and the insistence by the British government at the time of the decree of the retention of its prerogatives with respect to the designation and control of ports, call into question the commissioners' competency to recommend the division of a port, and suggest that the Privy Council would not have approved the commissioners' boundary report if a division of the port was intended.

[58] Nineteenth century state boundary commission reports omit the phrase, "up the middle of the river" in the recital of the 1740 Boundary Decree. *See* Reports of the New Hampshire-Maine Boundary Commissioners (1828, 1859, 1874) (boundary generally described as passing up through the mouth of the harbor and up the middle of the Newichwannock river) (on file with the N.H. Dept. of Justice).

tional channel did not exist when the crown affirmed the order of the boundary commissioners in 1740. It is well established that the meaning of terms and language used in a decree establishing a provincial boundary must be construed in accordance with contemporary usage, and cannot be established "by a rule of law declared long after its promulgation." *Vermont v. New Hampshire*, 289 U.S. at 604 (construing 1764 order). The thalweg principle as applied to boundary disputes between states arose from a presumption of congressional intent and was not definitively announced by this Court until 1893. *Texas v. Louisiana*, 410 U.S. 702, 709 (1973).

In the lateral marine boundary case between New Hampshire and Maine concluded by consent decree in 1977, the special master, former Associate Justice Tom Clark, declined to apply the principle of division by thalweg to the 1740 boundary decree. *See* Special Master's Report at 40-41. In so concluding, the Special Master found that the "thalweg" or principle of division by navigational channel had been first employed in the Treaty of Luneville in 1801.[59] *Id.* at 38; *see* Vittorio Adami, *National Frontiers in Relation to International Law*, 16-17 (T.T. Behrens trans., 1927); Kyösti Haataja, *Questions Juridiques*, 49 Fennia 1, 7-8 (1927). When the main channel principle began to be applied in the 19th century to treaties between independent states, as the treatises cited illustrate, its application was indicated by specific words referring to such a channel. There is no precedent suggesting that "middle of the river," as used in 1740 in an instrument setting a boundary between two provinces, would have referred to a navigational channel.

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[59] Although this Court approved the Consent Decree entered into by Maine and New Hampshire that established the lateral marine boundary by reference to the navigational channel, it did so without suggesting that the special master's conclusions concerning the "thalweg" were incorrect. *See New Hampshire v. Maine*, 426 U.S. at 369 ("[W]e ... see no reason not to give [the proposed consent decree] effect, even if we would reach a different conclusion upon the same evidence."). The use of the navigational channel as the basis for resolving the lateral marine boundary case by consent is not preclusive of this case.

VII. NEW HAMPSHIRE HAS NOT ACQUIESCED TO MAINE'S ASSERTED PRESCRIPTIVE CLAIM.

New Hampshire anticipates that Maine's prescription and acquiescence argument will depend heavily on the boundary shown on the United States Geological Survey ("USGS") map, York Quadrangle, Maine-N.H., Edition of 1920, No. 4300-W, 7300/15, and on an unpublished opinion of New Hampshire Attorney General George Pappagianis delivered to the Governor and Council in 1969 in which he opined that the Portsmouth Naval Shipyard was located in Maine.[60] Any contention that the USGS map establishes a boundary "by long usage" has been considered and rejected in the lateral marine boundary case.[61] *See* Special Master's Report, at 19.

The opinion of Attorney General Pappagianis dated October 15, 1969,[62] which addressed the issue of the Navy's withholding of Maine state income tax on shipyard workers, also does not establish New Hampshire's acquiescence in a midchannel boundary. The New Hampshire General Court has never accepted or endorsed the Pappagianis opinion. *See* Settlement Act, ch. 264, 1994 N.H. Laws 297-98 (App. at 32a). Even after Attorney General Pappagianis issued his opinion

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[60] *See* Ketterer Testimony, *supra*.

[61] Significantly, the United States Coast and Geodetic Survey (USC&GS) maps of Portsmouth Harbor have not and do not currently show a boundary in the inner portion of Portsmouth Harbor. In correspondence between the New Hampshire Attorney General's Office and the National Oceanographic and Atmospheric Survey, New Hampshire asserted that the location of the boundary in the inner harbor had not been determined. *See* Letter of E. Tupper Kinder, Assistant New Hampshire Attorney General to Capt. Roger F. Lanier, National Oceanic and Atmospheric Admin. (Dec. 8, 1980) ("I must also add the disclaimer that in the event the leg of the boundary depicted on your map between positions #1 and #2 [in the vicinity of Fort Point] (or for that matter, the boundary leg extending westerly from Point #1) [the inner harbor] ever becomes the subject of dispute between the two states, the State of New Hampshire cannot be bound by the end-point … that you have chosen to use on the map.") (on file with the N.H. Dept. of Justice). *See, e.g.*, Map Nos. 9-12.

[62] On file with the N.H. Dept. of Justice.

in 1969, New Hampshire did not withdraw or refrain from exercising jurisdiction in Portsmouth Harbor, nor did the federal government stop treating the Shipyard as located in New Hampshire for other purposes, such as applying state law to civilian unemployment claims. Until very recently, the Navy had treated some Shipyard buildings as if they were located in New Hampshire and did not withhold Maine income taxes on persons working in those buildings. Many New Hampshire employees at the Shipyard objected to and refused to pay Maine's income tax from 1968 to the present day, and Maine did not begin to attempt to collect unpaid taxes by garnishment until 1997.

On May 20, 1991, the General Court approved a Joint Resolution Concerning the Settlement of the Portsmouth New Hampshire Naval Shipyard and Inner Portsmouth Harbor Border Dispute Between New Hampshire and Maine which found that, "the attorney general of New Hampshire has stated his determination that the historical record provides no evidence that the actual location of the boundary decreed by King George II in 1740 has ever been determined in the vicinity of the Portsmouth, New Hampshire Naval Shipyard and Inner Portsmouth Harbor." A Joint Resolution Concerning the Settlement of Portsmouth, New Hampshire Naval Shipyard ... Dispute, ch. 154, 1991 N.H. Laws 207-08 (App. at 31a). In 1994, the New Hampshire General Court enacted a statute that provided that income earned by a New Hampshire civilian employee of Portsmouth Naval Shipyard shall be exempt from attachment, garnishment or other method of collection. N.H. Rev. Stat. Ann. 524:12 (1997). In the same year, the New Hampshire House of Representatives passed the Settlement Act, confirming the location of the boundary along the Maine shore by a vote of 329 to 3.

New Hampshire submits that Maine will not be able to show a long, uninterrupted history supporting its claim to a prescriptive boundary extending to the middle of the deepest channel. A decision affirming the historical and legal location of New Hampshire's boundary as including the port and

harbor will confirm, not disturb, the rights and titles long regarded or settled and fixed by the people who will be most affected. *Virginia v. Tennessee*, 148 U.S. at 524; *Rhode Island v. Massachusetts*, 45 U.S. (4 How.) 591, 639 (1846).

VIII. THE ISLANDS UPON WHICH THE PORTSMOUTH NAVAL SHIPYARD IS LOCATED ARE IN NEW HAMPSHIRE.

The five islands that now form the Portsmouth Naval Shipyard are situated in Portsmouth Harbor, New Hampshire, and, as such are within the statutorily defined boundary of Rockingham County, New Hampshire. When the United States government purchased Dennet's Island in 1800 for use as a naval shipyard, it reported the "purchase of ground" at "Portsmouth, New Hampshire."[63] For almost its whole history, the Shipyard has been variously called the "Portsmouth Navy Yard," the "Portsmouth Naval Base," and the "Portsmouth Naval Shipyard" and is identified on official U.S. documents of all kinds as located in New Hampshire.[64] The association of the Shipyard by name to Portsmouth, New Hampshire reflects the strong political and commercial ties between the Shipyard and New Hampshire over its entire history. For two hundred years, the state of New Hampshire and the city of Portsmouth have provided essential municipal services and political support to the Shipyard.

Maine's claim of territorial sovereignty over the shipyard rests heavily on its cessions of jurisdiction over Dennet's and Seavey's Island at the request of the United States government, granted in 1822 and 1866, respectively. The cessions of jurisdiction do not form the legal basis for a prescriptive

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[63] Letter from the Secretary of the Navy, to the Chairman of the Select Committee of the U.S. House of Representatives (1802) (on file with the N.H. Dept. of Justice). The United States also purchased property in four other coastal states, Massachusetts (Charleston), Rhode Island, Pennsylvania and New York, and in Washington, D.C. to establish naval shipyards. In each case, except for Portsmouth, the United States obtained a state cession of jurisdiction.

[64] *See, e.g.*, Map Nos. 41 and 42.

claim to the Shipyard because they do not rise to the level of imposition sufficient to establish a prescriptive right. On the contrary, the Navy's occupation of the islands rendered the issue of assertion of state jurisdiction moot for a long period thereafter. Moreover, the cessions by Maine provide no evidence respecting the historic location of the boundary.[65] As alleged in the complaint, it appears that the federal government determined that a cession by Maine was necessary solely based on the recording of the deeds to the islands in York County.[66] While the place of recording explains the request for cession of jurisdiction, it carries no weight in reaching a correct historical understanding as to the location of the boundary.[67]

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[65] Although Maine ceded jurisdiction to the federal government for the light on Whale's Back, documents from the U.S. Treasury Department indicate that the island was part of New Hampshire. *See Sundry Documents from the Treasury Department Relating to The Light-house on Whale's Back, in the State of New Hampshire,* H.R. Doc. No. 25-19, at 1 (1837).

[66] The issue of the territorial location of Dennet's Island arose as a result of a shooting incident in 1814 involving a marine stationed at the Shipyard. The United State Attorney General advised Commander Hull to remand the marine to the "judiciary of the United States" in the state of cession. As no state had ceded jurisdiction, the Secretary of the Navy advised the Commander of the shipyard to remand the marine to the civil state authorities in Massachusetts although the inquest and bail hearing had been conducted in New Hampshire. In 1822, the United States government obtained a cession of jurisdiction for Dennet's Island from the State of Maine. The record of the Attorney General's opinion cannot be located. In 1852, the compiler of Opinions of the Attorney General did not deem the opinion significant enough to warrant publication. *See Message From the President of the U.S. Transmitting Opinions of the Attorneys General,* H.R. Exec. Doc. No. 33-55, at 1 (1852) (transmitting opinions published between 1791 and 1850 in the Serial Set Nos. 602 and 603, 1-2151).

[67] The earliest deeds in the chain of title to the islands were recorded in the mid 17th century before the government of New Hampshire was established, and deeds for land that is unquestionably within New Hampshire are recorded in the York County registry. *See, e.g.,* deed to land in Dover, N.H., recorded in York County, January 31, 1710, York County Deeds, Bk. VII, Fol. 175; *see also* Map No. 28, (Massachusetts county boundaries shown).

Additionally, the cessions cannot be found to deprive New Hampshire of its right to assert its sovereignty over all territory within its historic boundaries, because the cessions cannot fairly be characterized as establishing a "long recognized boundary line." For two centuries the Portsmouth Naval Shipyard has been politically, culturally and economically attached to New Hampshire.[68]

As alleged in the complaint, the Navy treated the Shipyard as located in New Hampshire for many different legal and practical purposes, including execution of New Hampshire arrest warrants,[69] application of New Hampshire unemployment compensation laws and administration of unemployment claims through the New Hampshire Department of Employment Security, payment of federal impact aid to New Hampshire schools, automobile registration, motor vehicle laws, and police and other municipal services. Official affidavits, maps, and documents of all kinds over the entire history of the Shipyard identify its location as "Portsmouth, New Hampshire."[70] The Treaty of Portsmouth, signed by representatives of Japan and Russia at the Shipyard in 1905 recites that it was "done at Portsmouth, New Hampshire."[71]

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[68] *See Virginia v. Tennessee,* 148 U.S. at 524 ("moral considerations [which] should prevent any disturbance of long recognized boundary lines – considerations springing from regard to the natural sentiments and affections which grow up for places on which persons have long resided; the attachments to country, to home, and to family, on which is based all that is dearest and most valuable in life.").

[69] On December 14, 1947, Rear Admiral M.L. Deyo advised the Secretary of the Navy that "... the geographical location of that naval base is believed to make desirable an extension of the general authority.... It is therefore recommended that the Commander, U.S. Naval Base, Portsmouth, New Hampshire, be authorized to deliver enlisted men to authorities of the State of New Hampshire, without reference of each case to the Navy Department...." (Letters on file at the National Archives, Waltham, Mass.).

[70] *See, e.g.,* Map No. 42.

[71] Treaty of Portsmouth, Sept. 5, 1905, Japan-Russia, *reprinted in* Sydney Tyler, *The Japan-Russia War* 564-68 (1905). *See* photocopy of

In addition to the municipal, religious, recreational, cultural, civic, and educational services provided by the Portsmouth community to the Shipyard, the United States government identified appropriations for the Shipyard as going to New Hampshire, and the Navy and the United States government worked closely with the New Hampshire port authority, the New Hampshire congressional delegation, and state and local officials in New Hampshire to obtain improvements to Portsmouth Harbor necessitated by the Shipyard. At one time, the "Navy Yard" in Portsmouth, New Hampshire employed over 21% of the residents of Portsmouth and over 20% of the residents of contiguous towns in New Hampshire. A 1944 publication of the Portsmouth Chamber of Commerce calls the Navy Yard "Portsmouth's One Big Industry."[72]

By contrast, neither the state of Maine nor the town of Kittery encouraged or cultivated cultural, civic and municipal relationships to the Shipyard.[73] As stated in the 1886 Census Office Report, "The Navy Yard is on a small island across the river, and though this island is accredited to the Town of Kittery, it more properly belongs to Portsmouth."[74] Maine cannot assert a prescriptive right to the shipyard islands because the Shipyard has been attached to New Hamp-

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[71] *Cont.*
postcard, *reprinted in* Leon Anderson, *New Hampshire's Unique Japanese Charitable Fund: 75th Anniversary Treaty of Portsmouth* (1980) (App. at 52a).

[72] *The U.S. Navy Yard in the Postwar Period:* A Communication From the Portsmouth Chamber of Commerce (1944) (on file with the N.H. Dept. of Justice).

[73] In 1940, the attorney for the town of Kittery wrote to Admiral Wainwright that as "a matter of law ... the town of Kittery owes no municipal duty or the exercise of any municipal function to the residents or their families or their property who dwell upon the land now being developed for residential purposes by the Navy Department." Letter from Judson Hannigan to Admiral John D. Wainwright, U.S. Navy (Nov. 25, 1940) (on file with the N.H. Dept. of Justice).

[74] George E. Waring, Jr., U.S. Census Office, Department of Interior, *Portsmouth, Rockingham County, New Hampshire: Report on the Social Statistics of Cities, Part I, The New England and Middle States* 73 (1886).

shire for two hundred years. A decision affirming the location of New Hampshire's legal and historic boundary along the shore of Maine will comport with history and use.

CONCLUSION

This Court should exercise its original and exclusive jurisdiction to resolve the longstanding boundary dispute between the states of New Hampshire and Maine. The dispute should be resolved by finding the boundary in the inner portion of the Portsmouth Harbor and tidal portion of the river to be the low water mark on the Maine shore, and the boundary in the non-navigable part of the Salmon Falls River to be the geographical middle of the river.

Respectfully submitted,

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March 6, 2000

No. ___ , Original

IN THE

Supreme Court of the United States

STATE OF NEW HAMPSHIRE,

Plaintiff,

v.

STATE OF MAINE,

Defendant.

COMPLAINT

The state of New Hampshire, by and through its Attorney General, brings this suit against the Defendant, the state of Maine, and for its claim states:

I. JURISDICTION AND THE NEED FOR THE COURT TO ADDRESS THIS CONTROVERSY

1. The original and exclusive jurisdiction of this Court is invoked under Article III, Section 2, Clause 2 of the Constitution of the United States, and 28 U.S.C. Section 1251(a).

2. The state of New Hampshire asks this Court to exercise its original and exclusive jurisdiction to resolve a boundary dispute between the states of Maine and New Hampshire. The dispute concerns the location of the portion of New Hampshire's eastern boundary with Maine that has not been delineated and that begins at a point at the headwaters of the Salmon Falls River and ends at a point in the vicinity of Fort Point and Fishing Island in Portsmouth Harbor.

3. The lateral marine boundary running to a point in the vicinity of Fort Point and Fishing Island was established by a consent decree entered in this Court on October 3, 1977, 434 U.S. 1. The boundary in the Portsmouth Harbor and along the river northward of that point has not been delimited, delineated nor marked.

4. The area in dispute in this case includes Portsmouth Harbor northward and westward of Fort Point, including Seavey's Island at which the Portsmouth Naval Shipyard and three tenant activities, including the Naval Ambulatory Care Center (hereinafter the "Shipyard"), are located. At all times material to this Complaint, the state of New Hampshire has been and is now entitled, to the exclusion of the state of Maine, to exercise its sovereign authority over the whole of Portsmouth Harbor, and to exercise its sovereign authority over the islands and filled land within Portsmouth Harbor. The state of New Hampshire's sovereign authority includes, but is not limited to, the right to enforce all applicable state laws and to exercise state jurisdiction in Portsmouth Harbor and the Piscataqua River and to exercise concurrent jurisdiction to the extent allowed by the United States government over activities occurring at the Portsmouth Naval Shipyard.

II. THERE IS A CLEAR AND PRESENT CONTROVERSY WARRANTING THE EXERCISE OF JURISDICTION

5. There is a pressing need for this Court to adjudicate the controversy now existing between the states of Maine and New Hampshire. The United States government has taken steps to close portions of the Portsmouth Naval Shipyard and to lease land and facilities located at the Shipyard to private developers. Activities relating to such leased premises will come under the jurisdiction of the state in which the land is located. Resolution of the controversy is essential because the state of Maine is asserting that it has the right to enforce its laws on territory that the state of New Hampshire asserts is within its dominion and jurisdiction.

6. In recent years, certain federal officials have been incrementally changing their historic practice of treating the naval facilities as located in New Hampshire. These changes are based on what New Hampshire believes to be an inadequate examination of the historic and legal bases for determining the territorial location of the Shipyard.

7. For example, in 1985, the Navy changed the official duty station designation for the Shipyard from New Hampshire to Maine, although the Naval Ambulatory Care Center continues to retain a New Hampshire designation. Presently, Maine income tax is withheld from civilians employed at Shipyard facilities, but not for those employed at the Ambulatory Care Center. In 1990, the Shipyard unilaterally changed the designation of the state to which civilian unemployment claims are assigned from New Hampshire to Maine. (Such claims must be assigned to "the State in which such employees had the last official station in Federal service" under the federal Unemployment Compensation for Federal Employees program, 5 U.S.C. §8504.) In 1997, the Navy began honoring Maine garnishment orders against wages of Shipyard employees to collect Maine state income taxes purportedly due, notwithstanding a New Hampshire statute expressly exempting such wages from garnishment. N.H. Rev. Stat. Ann. 524:12 (1997). Although the Navy is ostensibly neutral in the dispute over the location of the state boundary, the officials responsible for taking the foregoing actions have refused to reverse their decisions.

8. In recent years, the Navy has also started to submit matters concerning review and approval of activities affecting the environment, preservation and protection of historic artifacts, and regulation of natural resources to the state of Maine's jurisdiction.

9. In 1999, the United States government entered into a lease agreement with a private developer to rehabilitate the former naval prison located on the Shipyard for private commercial use. The naval prison is located adjacent to the re-

mains of Fort Sullivan, a fort constructed and garrisoned by New Hampshire troops during the Revolutionary War and the War of 1812. The lease agreement provides for the exercise of state regulatory jurisdiction by the state of Maine, and neither permits the state of New Hampshire to exercise its jurisdiction over the renovation of the former naval prison, nor to take steps to ensure that the renovation of the former prison does not damage or destroy the remains of New Hampshire's historic Fort Sullivan. The state of Maine's exercise of state jurisdiction over the renovation of the former naval prison is adverse to New Hampshire's sovereign, territorial and historical interests.

10. A definitely established boundary is required to properly manage and regulate Portsmouth Harbor and the Piscataqua River, and to resolve disputed issues of state sovereignty between the states of Maine and New Hampshire over Portsmouth Harbor and islands on which the Shipyard is located. These disputed issues of state sovereignty include, but are not limited to, the regulation and control of the waters and submerged lands of Portsmouth Harbor, the regulation and control of land and water based activities occurring at the Portsmouth Naval Shipyard, the regulation and control of natural resources, and the enforcement of state laws and rules in Portsmouth Harbor and the Piscataqua River.

III. THE RESPECTIVE CLAIMS OF THE PARTIES

11. New Hampshire asserts that its historic and legal boundary includes all of Portsmouth Harbor to the Maine shore, together with all islands in Portsmouth Harbor, including the islands on which the Shipyard is located. New Hampshire's jurisdiction includes, but is not limited to, the right to enforce its state laws and to exercise its jurisdiction in Portsmouth Harbor, including the right to exercise concurrent state jurisdiction over federal activities occurring at the Portsmouth Naval Shipyard to the extent consistent with law.

12. New Hampshire's claim of jurisdiction has been affirmed by act of the New Hampshire General Court, Laws of 1994, Chapter 264, which declares, "Jurisdiction and control over the whole of the Piscataqua River is and always has been entirely within the county of Rockingham and this state.... Complete dominion and ownership of the tidal waters and submerged lands of the whole of the Piscataqua River, and including its Portsmouth Harbor, are solely vested in the sovereign people of the state of New Hampshire, encumbered only by the national navigational servitude over the river and its harbor as a navigable inland waterway and arm of the sea."

13. Maine contends that its boundary with New Hampshire is located on the New Hampshire side of the islands that now form the Shipyard. Maine asserts that its territorial and proprietary jurisdiction extends to the midpoint of the deepest channel of the tidal estuary of the Piscataqua River. Maine contends that its claimed boundary has been established by prescription and acquiescence.

IV. THE HISTORICAL BASIS FOR NEW HAMPSHIRE'S CLAIM

14. The location of New Hampshire's eastern boundary is based on the 1691 royal charter to the Massachusetts Bay Colony (of which Maine was then a part); a 1740 decree of the King in Council respecting the boundaries between New Hampshire and Massachusetts Bay; an act of the New Hampshire provincial council and assembly that established the boundaries of Rockingham County, which the King in Council confirmed in 1770; acts of the province of Massachusetts Bay establishing the boundaries of York County; New Hampshire's historic regulation and control of Portsmouth Harbor that began in 1679 and has continued without interruption through the present; New Hampshire's assumption and exercise of all of the Crown's governmental rights and powers in Portsmouth Harbor above Fort Point after its declaration

of independence from Great Britain; and the subsequent ratification by the states of Massachusetts, New Hampshire and Maine, of New Hampshire's jurisdiction over the harbor by, *inter alia*, reenactment of the colonial county boundaries. Usage, custom and history all support New Hampshire's assertion of a boundary in Portsmouth Harbor located at the low water mark of the Maine shore.

A. EARLY BOUNDARY DESCRIPTIONS

15. The royal charter granted to the Massachusetts Bay colony in 1691 included a portion of the original Province of Maine, described in pertinent part as:

> ...all that part or porc̃on of Main Land beginning at the Entrance of Pescata way Harbour and soe to pass upp the same into the River of Newickewannock and through the same into the furthest head thereof and from thence Northwestward, till One Hundred and Twenty Miles be finished and from Piscata way Harbour mouth aforesaid North-Eastward along the Sea Coast to Sagadehock and from the Period of One Hundred and Twenty miles aforesaid to crosse over Land to the One Hundred and Twenty miles before reckoned up into the Land from Piscataway Harbour through Newickawannock River and alsoe the North halfe of the Isles and Shoales ... and alsoe all Islands and Isletts lying within tenn Leagues directly opposite to the Main Land within the said bounds....

(emphasis added). The Charter of 1691 did not grant Massachusetts any part of the Piscataqua River or the Port of Piscataqua, or any islands other than those "directly opposite to the main land."

16. During the entire colonial period, New Hampshire was a royal province governed pursuant to commissions and instructions issued to successive governors appointed by the king. The "Port of Piscataqua," which included the Piscataqua

River from its mouth to the town of Berwick, Maine, was subject to provincial laws and was under the sole jurisdiction of New Hampshire provincial officials and royal officials appointed for the province of New Hampshire, for all purposes including enforcement of navigation laws, defense, duties on shipping, vessel registration, admiralty jurisdiction, and natural resource management.

17. In 1735, the crown appointed commissioners to determine the dividing lines between the provinces of New Hampshire and Massachusetts Bay. The two provinces contested many issues concerning their southern and northern boundaries, but there was no issue raised before the commissioners concerning the location of the boundary southward of the headwaters of the Salmon Falls River.

18. In a decision dated September 2, 1737, the commissioners concluded as to the northern boundary (*i.e.*, the eastern boundary of New Hampshire):

> ...the Dividing Line Shall pass up thro' the mouth of Piscataqua Harbour & up the Middle of the River into ye River of Newichwannock (part of which is now called Salmon Falls) & thro' the Middle of the Same to the furthest head thereof & from thence North two Degrees Westerly until one hundred & twenty Miles be finished from ye Mouth of the Piscataqua Harbour Afores^{d} or until it meets with His Majestys other Governm^{ts} and that the Dividing line shall part the Isles of Shoals & run thro' the Middle of the Harbour between the Islands to the sea on the Southerly Side & that the Southwesterly part of the Said Islands Shall lye in & be Accounted part of the Prov. of New Hamp^{r} & that ye North Easterly part thereof shall lie & be Accounted part of the Prov. of Mass^{a} Bay & be held & Enjoyed by the Said Prov^{s} Respectively in the Same manner as they do Now & have heretofore held and Enjoyd the Same –

19. New Hampshire and Massachusetts both filed appeals from the commissioners' decision. In 1740, the King in Council affirmed the 1737 report of the commissioners as to the northern boundary.

20. The boundary described in the 1737 commissioners' report did not divide the Port of Piscataqua nor did it grant any portion of the Port of Piscataqua to Massachusetts. Under English law, the title to and prerogative powers with respect to the port and the harbor remained in the crown, and the boundary commissioners did not have jurisdiction to grant or confer title or governmental rights on the Massachusetts Bay Colony to the Port of Piscataqua. The 1740 Boundary Decree did not affect or alter title or jurisdiction over the Port of Piscataqua. After the 1740 Boundary Decree, New Hampshire officials and the New Hampshire Council and Assembly continued to exercise exclusive governmental jurisdiction, subject to crown direction, over the entire Port of Piscataqua.

21. No official state survey or state boundary commission has delineated, marked or mapped a boundary between New Hampshire and Maine in the vicinity of Portsmouth Harbor, and, since New Hampshire's statehood, no boundary line in or near Portsmouth Harbor has been officially marked, identified or surveyed in the vicinity of Portsmouth Harbor. In 1768, before New Hampshire's statehood, Governor Wentworth retained Robert Fletcher to survey and map New Hampshire's eastern boundary with Maine. Under the direction of Isaac Rindge, His Majesty's Surveyor General, Robert Fletcher began his survey of the eastern boundary line from a point on the Maine shore.

B. ESTABLISHMENT OF COUNTIES

22. In 1652, the General Court of Massachusetts Bay (which was then in de facto control of Maine) established the County of Yorkeshire, which was described as consisting of the "whole tract of land beyond the River of Piscataq north-

erly, together with the Isles of Shoals, within our said bounds" (emphasis added). In a 1760 Provincial Act, the Massachusetts General Court ratified that description when it established two new counties (Cumberland and Lincoln) in the easterly part of the county of York and provided that the westerly boundary (the boundary between York County and New Hampshire) "shall remain the same as heretofore." After the Revolution, the District of Maine was created, consisting of the counties of York (still bounded on the west as described in 1652), Cumberland and Lincoln. On March 3, 1820, the district of Maine became the state of Maine, its western boundary unchanged. The first legislative attempt by Maine to define any part of its western boundary as extending into the Piscataqua River occurred in 1995, when the Maine legislature passed an act "clarifying" the boundary of one of its towns as "continuing west to the middle of the Piscataqua or Salmon Falls Rivers," to which New Hampshire has not assented.

23. The boundaries of the Province of New Hampshire are defined in a 1769 provincial act dividing New Hampshire into counties. That Act describes Rockingham County, New Hampshire, as:

> beginning at the Mouth of Piscataqua River and to run up the Same into the Easterly corner of New Market <u>including the river</u> and from thence North Westerly, thence west to the Province Line, thence by said line to the sea, thence by the Sea to the bounds first mentioned included all that part of the Isles of shoals which belongs to this Province.

(emphasis added). In 1770, the Act was confirmed, enacted and ratified by the King in Council.

24. In 1791, the New Hampshire General Court passed an Act Declaring the Limits and Boundaries of the Several Counties of New Hampshire. The Act reiterated the 1769 description of the county of Rockingham as "beginning at the mouth

of Piscataqua River and running up the same to the Easterly corner of Newmarket including the River" (emphasis added). A 1791 map of the state of New Hampshire prepared by Jeremy Belknap, New Hampshire's most authoritative historian and founder of the Massachusetts Historical Society, shows the boundaries of the respective counties; Rockingham County extends along the Maine shore through Portsmouth Harbor. The statutory definition of Rockingham County has been reenacted in successive New Hampshire statutory codifications and remains unchanged.

C. EXERCISE OF JURISDICTION IN THE HARBOR AND TIDAL RIVER

25. By establishing New Hampshire as a Royal Province without a charter, the Crown reserved, and exercised, either directly or through the government of the Province of New Hampshire, all traditional crown prerogative rights and powers. These rights and powers included the use and operation of the Port of Piscataqua, the defense of the port, the regulation of exports, restrictions on shipping in aid of collecting customs duties, control of navigation, and prohibition of nuisances. In particular, New Hampshire's provincial assembly during the colonial period, including the period following the issuance of the 1740 Decree, exclusively regulated fishing, appropriated funds for the repair and garrisoning of fortifications, including Fort Point which controlled all traffic into the harbor, as well as batteries in other strategic locations on both sides of the harbor, and imposed duties on all shipping into the harbor. The New Hampshire governor, acting as such, and the lieutenant governor appointed officers to command Fort Point and other fortifications, enforced New Hampshire laws relating to the port and the river, and appointed, subject to approval by the Crown, the provincial naval officer who had the responsibility of enforcing parliamentary navigation and customs acts.

26. The King's approval in 1770 of the 1769 Act Dividing New Hampshire into Counties confirmed the common law judicial jurisdiction of the courts of the province of New Hampshire and Rockingham County over activities occurring in the Port of Piscataqua and the Piscataqua River.

27. Following New Hampshire's declaration of independence from Great Britain, the state of New Hampshire assumed full and exclusive sovereignty over the Port of Piscataqua. The state of New Hampshire replaced all crown officials having authority over the port and the river, particularly the governor, customs collector and naval officer, with officials appointed by the Provincial Congress and General Court acting under authority of the people of New Hampshire. The President of New Hampshire took exclusive control of Fort Point and appointed a commanding officer to control all shipping into the port. In defense of its port, the government of New Hampshire built, repaired and manned fortifications in the port, including Fort Sullivan on Seavey's Island, placed a boom across the Narrows, and sank a prize ship in Crooked Lane. The New Hampshire Committee of Safety exercised plenary authority over all vessels entering and leaving the harbor and assumed exclusive operational and financial responsibility for the defense of the port.

28. New Hampshire also appointed a new admiralty judge and established a maritime court to exercise the jurisdiction previously exercised by the provincial admiralty court over the Port of Piscataqua. The New Hampshire maritime court exercised its jurisdiction over the Port of Piscataqua as to prize cases and other admiralty matters during the revolutionary and confederation periods. Under the authority of the Acts of the New Hampshire General Court, New Hampshire imposed duties and fees on all shipping into the harbor, and regulated fishing, ballast disposal, and other matters affecting public rights and interests in the Port of Piscataqua. The New Hampshire naval officer enforced the New Hampshire navigation acts with respect to all shipping in the port, and

vessels attached to Kittery and Berwick on the mainland continued to be registered with the New Hampshire naval officer as belonging to the New Hampshire port until the federal government assumed authority to regulate navigation in 1789. New Hampshire licensed pilots to supervise shipping in the Port of Piscataqua and required, and still requires, all ships to hire such pilots or pay a fee established by New Hampshire statute. By an act passed in 1785, New Hampshire defined its pilotage grounds as extending as far as "the Eastermost of the Sisters," well to the northeast of the harbor mouth.

29. Massachusetts asserted no such sovereign powers or prerogatives in the Port of Piscataqua or the Piscataqua River after its declaration of independence, and neither claimed nor exercised such responsibilities during or after the revolutionary and confederation periods. Massachusetts acknowledged the sovereignty of New Hampshire over the entire port and the river above Fort Point at the time the two states entered the union under the United States Constitution.

30. At the time that it ratified the United States Constitution, New Hampshire had established its sole and exclusive jurisdiction as a sovereign state over the Port of Piscataqua above Fort Point. New Hampshire entered the union having its territorial and governmental jurisdiction over the Port of Piscataqua undisputed by Massachusetts or any other state.

31. Upon ratification of the United States Constitution, New Hampshire ceded certain powers, including the power to collect duties and admiralty jurisdiction, to the federal government. In all other respects during the nineteenth century, New Hampshire continued to assert its proprietary and territorial jurisdiction and sovereignty over the entire harbor of Portsmouth, its only seaport, and the Piscataqua River. During the War of 1812, New Hampshire defended Portsmouth Harbor by paying for supplies and provisions used by volunteers in Kittery and Fort McClary and by sending its

militia to Forts Sullivan and Constitution. By law and ordinance, New Hampshire and the city of Portsmouth enacted and enforced laws and ordinances to regulate pilotage in Portsmouth Harbor, to prohibit obstructions and impediments to navigation, and to enforce quarantine on all ships entering the harbor. By statute, the harbor master of the city of Portsmouth had authority to regulate and control traffic in the harbor, Portsmouth health officers had exclusive jurisdiction over Portsmouth Harbor to enforce quarantine laws, some of which required vessels to lay over in Pepperell Cove northward of the Fishing Islands, and Portsmouth port wardens had authority to examine any vessel lying in the harbor of Portsmouth, which included the entire Piscataqua River from its mouth to the wharves of Portsmouth. The federal District Court for the District of New Hampshire exercised jurisdiction over activities occurring in the Port of Portsmouth, and considered the Port of Portsmouth to be within its jurisdiction.

32. Since Maine's admission as a state in 1820, the state of New Hampshire and the city of Portsmouth have continued to enact laws and ordinances to regulate and control Portsmouth Harbor and the Piscataqua River that include, *inter alia*, acts preventing obstructions and impediments to navigation, acts to preserve bass in the Piscataqua River, and health and safety regulations requiring the anchoring, inspection, and quarantine of all ships entering the harbor.

V. THE UNITED STATES GOVERNMENT FACILITIES IN PORTSMOUTH HARBOR

33. The Portsmouth Naval Shipyard and related U.S. facilities are located on five islands in Portsmouth Harbor which are connected by fill added after the shipyard was established. The two major islands that comprise the Shipyard were known as Dennett's and Seavey's Islands. The United States acquired Dennett's Island in 1800, and acquired Seavey's Island in 1866.

34. In 1822, at the request of an official of the United States government, the Maine legislature ceded jurisdiction over Dennett's Island to the United States. In 1866, the Maine legislature, again at the request of the United States government, passed an act ceding jurisdiction over Seavey's Island. In 1883, New Hampshire ceded jurisdiction to the United States government over all property in the state acquired or used by the United States Government.

35. Notwithstanding the cession by Maine of jurisdiction over the original dry land area of Dennett's and Seavey's Islands, the United States government has until recently treated the original islands, the filled areas and the surrounding harbor as located in New Hampshire for legal, political, economic and social purposes. For example, the Navy has permitted New Hampshire law enforcement officials to make arrests at the Shipyard on authority of arrest warrants issued by New Hampshire courts; New Hampshire school districts received federal impact aid measured by the number of children whose parents lived or worked at the Shipyard under 20 U.S.C. §238, which required that the respective facility be located "in whole or in part in the same state as the school district;" the Navy has worked closely with New Hampshire's political delegations and the citizens of Portsmouth to obtain support for improvements to the Shipyard or Portsmouth Harbor; until 1990, the Navy assigned unemployment compensation claims for its civilian employees at the Shipyard to New Hampshire; the Navy has looked to New Hampshire to defend and protect Portsmouth Harbor; the Navy has identified the shipyard post office as located in Portsmouth, New Hampshire; the Navy has used municipal services provided without charge by the city of Portsmouth including fire protection, police protection, and recreational and cultural services; the Navy has applied city of Portsmouth traffic regulations at the Shipyard; the Navy has entered into contracts for electric service that identify the service location as Rockingham County, New Hampshire; the Navy has encouraged naval officers and civilians who lived on the Ship-

yard to register their cars in New Hampshire; births and deaths occurring at the Shipyard have been recorded as occurring in New Hampshire; and Congress and the Navy have identified the Shipyard, the Portsmouth Naval Base and other naval facilities located on the harbor islands as located in New Hampshire in appropriations bills, resolutions, maps, and legal documents of every kind over the course of nearly two centuries.

36. The United States government also has identified and treated Portsmouth Harbor as being located in New Hampshire. Many United States government documents identify "Portsmouth Harbor" as being located exclusively in New Hampshire, and describe Portsmouth Harbor as that portion of the Piscataqua River from its mouth to the wharves of Portsmouth. The United States government and the Navy have sought support and assistance from the state of New Hampshire and its political delegations, and have worked primarily with the state of New Hampshire in making improvements to Portsmouth Harbor in aid of navigation. These improvements include, but are not limited to, the construction of a dry dock at the Shipyard, the removal of Henderson's Point from Seavey's Island, the dredging of the southwest point of Badgers Island, and the removal of Gangway Rock and Boiling Rock in the Piscataqua River. Recently, the state of New Hampshire paid the entire state share, totaling almost $5 million, of a federally managed project to dredge a turning basin in Portsmouth Harbor that extends to the low water mark of the Maine shore.

VI. LEGAL BASIS FOR NEW HAMPSHIRE'S CLAIMS

37. New Hampshire asserts that it has a right to exercise its sovereignty over all land and territory within the boundaries of the Province of New Hampshire, as well as all land and territory belonging to the British crown at the time of New Hampshire's independence, to which New Hampshire

succeeded as the result of its assumption of the powers and duties of government and the British crown's relinquishment of its jurisdiction and propriety in the Peace Treaty of 1783.

38. The statutory definition of Rockingham county, ratified by the King before the Revolution, and re-enacted by the New Hampshire General Court in 1791, confirmed New Hampshire's territorial sovereignty over the Piscataqua River and Portsmouth Harbor to the northern limit of Rockingham County. The northern limit of Rockingham County extends to the low water mark of the Maine shore through the inner Portsmouth Harbor.

39. The powers and duties of government reserved to Great Britain and exercised by the Province of New Hampshire in the Port of Piscataqua until the time of New Hampshire's independence were assumed and exercised exclusively by the state of New Hampshire from the time of its independence. At the time of its ratification of the Constitution of the United States and entry into the union, New Hampshire's boundaries included the Port of Piscataqua, the Piscataqua River, and the islands and submerged lands located in the Port of Piscataqua.

40. At the time of its entry into the union in 1820, the state of Maine was defined by reference to the historic county of Yorkeshire, which included "land beyond the Piscataqua." Neither the county of York, the province of Maine, nor the District of Maine had title to any submerged land in the Piscataqua River or Portsmouth Harbor.

41. New Hampshire admits that over time Maine has acquired prescriptive rights to Badgers Island, that is located in Portsmouth Harbor. New Hampshire denies that Maine has obtained a prescriptive right to any of the islands and submerged lands presently occupied by the U.S. Navy or to any filled land adjacent to those islands.

WHEREFORE, the state of New Hampshire requests:

A. That process be issued against the state of Maine and that the state of Maine be required to answer this Complaint; and

B. That a decree be entered declaring the true and correct boundary line between the state of New Hampshire and the state of Maine; and

C. That the boundary line be declared to run along the low water mark on the Maine shore across all creeks and tributaries from the end of the lateral marine boundary to the limits of tidal flow, and that the boundary be declared to run along the thread or geographic middle of the Salmon Falls River above the reach of the tide until it joins the delineated portion of the eastern boundary between the states of Maine and New Hampshire, and that Badger's Island be decreed to lie in the state of Maine; and

D. That this Court grant such further relief as may be just and equitable.

Respectfully submitted,

STATE OF NEW HAMPSHIRE

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Dated: March 6, 2000

No. ____, Original

IN THE

Supreme Court of the United States

STATE OF NEW HAMPSHIRE,

Plaintiff,

v.

STATE OF MAINE,

Defendant.

APPENDICES

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1 N.H. Laws 33 (1680-81)

[ACTS OF THE ASSEMBLY IN PORTSMOUTH
OCT. 11, 1680-1681]

[28] IT IS further Ordered; That no Ship, or other Vessel; shal cast out any ballast in the channel, or other place inconvenient, in any harbour or River within this Province; upon the penalty of Ten pound.

Chapter 6, 2 N.H. Laws 257 (1718)

AN ACT ABOUT POWDER MONEY.

Be it Enacted by His Excellency the Governour, Council, and Representatives in General Assembly Convened, and by the Authority of the same, That every Forreign Ship, or Vessel above Thirty Tons, coming into any Port or Part of this Province from over the Sea to Trade or Traffick, all or the major part of the Owners whereof are not actually Inhabitants of this Province, shall every Voyage they make, pay Two Shillings in Money per Ton, or One Pound of good Gun-Powder, for the supply of His Majesty's Fort, and Fortifications within this Province; to be received by the Treasurer, or such other Person or Persons, as shall be appointed to receive the same.

Chapter 14, 3 N.H. Laws 182 (1758)

AN ACT FOR LAYING AN EMBARGO UPON SHIPS & OTHER VESSELS IN THIS PROVINCE

Whereas it is judged necessary for His Majestys service that an Embargo should be laid upon ships & other Vessels within this Province Be it therefore Enacted by the Governor, Council & Assembly, That no Vessell shall sail or Depart from any Port or other Place of this Province out of it, till the first Day of June next without Leave first obtained from his Excellency the Governor, with the advice of His Majestys Council & if any Vessel shall sail or depart to any Port of Place out of Said Province without Leave first had & obtained as aforesaid the Master of Every Vessel so departing shall forfeit & Pay The Sum of Three Hundred Pounds & the Owner or Owners of every Vessel so departing shall forfeit & Pay the sum of Three Hundred Pounds & the said last mentioned Forfeiture shall & may be recovered from any or Either of the Owners of such Vessel where More than one Person shall be interested.

And be it further Enacted That no Fishing-Vessel shall depart out of any Port or Place of this Province to the Banks of Newfoundland or any other of the Banks before the said first Day of June next without Leave first had & obtained as aforesaid And the Owner or Owners of any Fishing Vessel That may depart contrary to thetrue Intent & Meaning of this Act shall forfeit & pay the like sum of Three Hundred Pounds saving only such small Vessels or Boats as may be employed in catching of Fish & that shall not be absent more than Six Days at a time extraordinary Casualties excepted the aforesaid Penalties to be recovered by Bill Plaint or Information before any of his Majestys Courts of Record Within this Province

And be further Enacted That all Forfeitures by this Act shall be one half to his Majesty to be paid into the Province Treasury for the use of this Province the other half to him or Them that shall inform & sue for the Same

And be it further Enacted That it shall & may be lawful for the Governor with the Advice of the Council at any time before the said first Day of June next to take of Said Embargo or to Extend it beyond Said Time not Exceeding the twenty second Day of June next under the Same Penalties if his Majestys service will permit the one or shall require the other

Chapter 9, 3 N.H. Laws 524-25 (1769)

AN ACT FOR DIVIDING THIS PROVINCE INTO COUNTIES, AND FOR THE MORE EASY ADMINISTRATION OF JUSTICE. –

For as much as the great Increase of the Inhabitants of this Province, and the remote Situation of Many of them from Portsmouth, where the Courts of Judicature are now held have renderd the Administration of Justice very expensive & Difficult & in Some Cases almost Impracticable, the People being Generally not of Sufficient ability to Travel far–And Whereas by Sundry Laws of the Province the Present place of holding the Courts is so Establishd that an Adequate Remedy for so great Inconvenience & Difficulty cannot be fully & Effectually Obtaind without an Act of the General Assembly.

And his Majesty having been Graciously Pleased to permit the Governor to Assent to an Act for that Purpose

Be it therefore Enacted By the Governor Council and Assembly, that the Province be and hereby is Divided into Five Counties, in the Following manner, That is to Say, the Bounds of the first County to begin at the Mouth of Piscataqua River, & to run up the Same the Easterly Corner of New Market Including the river, and from thence North Westerly by the Easterly, & Northerly side Lines of new Market, Epping, Nottingham Chichester & Canterbury to the River and down the Same to the Line of Concord Including the River then round the Westerly Lines of Bow Concord & Pembroke, to Merrimack River thence down the same to the North West Corner of Derryfield, thence by the Easterly lines of Derryfield Litchfield & Nottingham West to the Province Line thence by said Line to the sea, thence by the Sea to the bounds first Mentiond, Including all that part of the Isles of shoals whch belongs to this Province

Chapter 16, 3 N.H. Laws 555 (1771)

AN ACT FOR ESTABLISHING A LIGHT TO BE KEPT AT FORT WILLIAM AND MARY FOR THE BENEFIT OF VESSELLS ARRIVING OR BEING UPON THIS COAST IN THE NIGHT TIME.

Whereas losses frequently happen of the Lives and property's of Persons, Arriving and being upon the Sea coast of this Province in the Night time for want of a Proper Light for their direction, and it is Thought that Large and Suitable Lanthorn to be Lighted and kept upon the Top of the Mast that Supports the flagstaff at the fort might be a means of Preserving the lives & property's of many Persons.

Be it Therefore Enacted by the Governour Council and Assembly that there shall be procured and kept at his Majesty's Fort William and Mary, under the direction of the Commander of said Fort, a Large and Suitable Lanthorn to be Lighted and Raised each night into the top of the Mast that Supports the Flagstaff, for the Benefit of Marriners being on this Coast in the night time. and that the Expence of procuring and maintaining the same be once a year–or oftener setled, by the Governour Council and Assembly, and paid out of the Treasury of this Province.-- And that a duty of Nine pence on all Sloops and Schooners, of more than Thirty tons burthen, and one Shilling and Six pence on other Vessells, be Laid, levied, and Collected, by the Commander of said Fort, Every Voyage they make, free of Charge, to be paid on passing out by the Fort, and that the same be paid, by him, to the Treasurer of this Province, once a year or oftener if Required, to be laid out for the Purpose aforesaid, as the Governour Council and Assembly shall order.

This act to Continue and be in force for the Term of Three years and no Longer.

Chapter 7, 3 N.H. Laws 572 (1772)

AN ACT IN ADDITION TO AN ACT ENTITULED AN ACT FOR ESTABLISHING A LIGHT TO BE KEPT AT FORT WILLIAM & MARY FOR THE BENEFIT OF VESSELS ARRIVING OR BEING UPON THIS COAST IN THE NIGHT TIME.

Whereas the Method prescribed in the before mentioned Act of a Suitable Lanthorn being lighted and raised each Night into the Top of the Mast that Supports the Flag-staff has been found Impracticable, and a Light House hath been lately erected for that purpose. And also the Duty therein Ordered to be paid by the Vessels on their passing out by the Fort is found to be Insufficient for the supporting the Light in said Light House.

For remedy whereof.

Be it Enacted by the Governor Council & Assembly that a suitable Light be kept each Night in the Lanthorn on the Top of the Light House lately erected at the aforesaid Fort William & Mary instead of its being kept on the Top of the Mast that supports the Flag-staff as directed in said Act.

And be it further Enacted by the Authority aforesaid that in the stead and in full of the Duty of Nine Pence on all Sloops and Schooners of more than Thirty Tuns Burthen, and one Shilling and Six Pence on other Vessels required to be paid by said Act there be now laid levied collected and paid as follows Viz, on all Vessels from Thirty Tuns to one Hundred Tuns Burthen Two Shillings. And on all Vessels from one Hundred Tuns to Two Hundred Tuns Burthen Four Shillings, and on all Vessels of more than Two Hundred Tuns Burthen Eight Shillings. And all Vessels from Fifteen to Thirty Tuns Burthen shall pay Six Shillings at their first Entry into the Harbour and no further payment for Light Money to be demanded of them for the space of one Year next following or Otherwise (at their Election) one Shilling for Every Entry into the Harbour

And be it further Enacted by the Authority aforesaid that the person who shall be Appointed to be the keeper of said light shall carefully Attend his duty at all Times in kindling the Lights from the Sun-setting to Sun Rising and keeping the same Sufficiently Supplied with Oil And upon conviction of Neglect of his Duty before the Court of General Quarter Sessions of the Peace within the County shall be liable to be fined according to the degree and circumstance of his Offence, not exceeding one Hundred Pounds, Two thirds thereof to be to his Majesty, to and for the Support of the Government of this his Majesty's Province and the Other third part thereof to the Person or Persons that shall Inform of such Neglect.

This Act to be in force until the Twelfth day of April which will be in the Year of our Lord one Thousand Seven Thousand and Seventy Four & no longer, being the time when the Aforesaid Act refer'd to will expire

Chapter 18, 3 N.H. Laws 594-95 (1773)

AN ACT IN ADDITION TO AND FOR THE AMENDMENT OF THE SEVERAL ACTS OF THIS PROVINCE ESTABLISHING A LIGHT TO BE KEPT AT THIS MAJESTY'S FORT WILLIAM AND MARY FOR THE BENEFIT OF VESSELS ARRIVING OR BEING UPON THIS COAST IN THE NIGHT TIME–

Whereas the duty directed by the aforesaid Acts to be paid by Vessels passing out by said Fort has been found by Experience to be Inadequate for the purposes thereby Intended and further Regulations Appearing necessary–

Therefore–

Be it Enacted by the Governor Council and Assembly that all Vessels passing by the Said Fort liable by the aforesaid Acts to a Duty, shall pay as follows Viz all Vessels from fifteen to Thirty Tons burthen shall pay Six Shillings each at their first entry into the Harbour and no further light money to be demanded of them for the space of one year next following or Otherwise at their Election one Shilling for every entry into the Harbour All Vessels from Thirty to fifty Tons Burthen three Shillings Each. All Vessels from fifty to One Hundred Tons Burthen Six Shillings Each. All Vessels from One Hundred to one Hundred and fifty Tons Burthen Eight Shillings Each. And all Vessels of more than One Hundred and fifty Tons Twelve Shillings Each.

And be it further Enacted by the Authority Aforesaid that the person who shall be Appointed by his Excellency the Governor to be the keeper of said Light shall Carefully Attend his duty therein at all times in kindling the lights from the Twentieth day of September to the Twentieth day of March at half an hour after Sunset and to keep the Same Burning half an hour before Sun Rising And from The Said Twentieth day of March until the said Twentieth day of September the lights be kept Burning from an hour after Sunset until an hour before Sunrising. For which Service the said

keeper of said Lights shall Receive Twenty Four pounds out of the Money Arising by the Dutys Aforesaid. And for neglect of kindling and Supplying the Lights as aforesaid the Said keeper shall be liable to the fine Imposed by the Aforementioned Acts

And the Duty's beforementioned to be paid on all Vessels from Thirty Tons Burthen and Upwards to be paid every Voyage they make and to be in full of all light money–

This Act to be in force untill the Twelfth day of April which will be in the Year of our Lord one Thousand Seven Hundred and Seventy four and no longer–

Chapter 3, 3 N.H. Laws 623 (1774)

AN ACT FOR ESTABLISHING & KEEPING A LIGHT AT THE LIGHT-HOUSE AT FORT WILLIAM & MARY WITHIN THIS PROVINCE FOR THE BENEFIT OF VESSELS ARRIVING OR BEING UPON THIS COAST IN THE NIGHT-TIME.

Whereas the keeping a Light at said Light House hath heretofore been found beneficial to Mariners upon this Coast & the Continuance of the same still appearing necessary as it may be a means of preserving the Lives & Properties of many Persons

Be it therefore Enacted by the Governor, Council, & Assembly, That there shall be kept, & supported a Light at said Light House, for the Benefit of Mariners being on this Coast in the Night Time ; & the Expence of the same shall be once a Year, or oftener settled by the Governor, Council, & Assembly, & paid out of the Treasury of this Province. And all Vessels from Fifteen to Thirty Tons Burthen, shall pay a Duty of Six Shillings each at their first Entry into the Harbour, & no further Light Money shall be demanded of them for the Space of One Year next following, or otherwise at their Election One Shilling for evry Entry into the Harbour : And all other Vessels from Thirty Tons Burthen & upwards shall pay a Duty of One penny, half penny, Pr Ton each, ev'ry Voyage they make on passing out of the Harbour by the Fort, Tonnage of said Vessels to be computed according to that, mentioned in their respective Registers.

And be it further Enacted by the Authority aforesaid That the Person who shall be appointed by his Excellency the Governor to be keeper of said Light, shall carefully attend his Duty therein at all Times in kindling the Lights from the Time of the passing this Act to the Twentieth of September next at an Hour after Sun-set, & to keep the same burning untill an Hour before Sun-rise ; & from the Twentieth Day of said September, untill the Twentieth of March next, the

Lights shall be kept burning from half an Hour after Sunset untill half an Hour before Sun-rise ; & from the Twentieth of said March, until the Expiration of this Act the same Lights shall be kept burning from an Hour after Sunset untill an Hour before Sun-rising; For which Service the Keeper of said Lights shall receive Twenty Four Pounds out of the Money arising by the Duties aforesaid ; Which said Duties shall be paid to, & collected by the Secretary of this Province & paid by him to the Treasurer of this Province half yearly, or oftener if Required ; a particular Account of which shall be rendered to the General Assembly to be by them adjusted, & allow'd, to be applied for the Support of said light, as the Governor, Council, & Assembly shall order. And in Case the Keeper of said Light, shall neglect to kindle, & supply the same in Manner as aforesaid, he shall forfeit, & pay for the Use of this Government the Sum of Fifty Pounds for each Time he shall so neglect : to be recovered by Information or Indictment in any Court of Record within this County proper to try the same for the Use aforesaid.

This Act to continue, & be in Force untill the first Day of June, which will be in the Year of our Lord One Thousand Seven Hundred & Seventy Five, & no longer.

Chapter 14, 4 N.H. Laws 184 (1778)

AN ACT FOR ESTABLISHING A NAVAL OFFICE AT PORTSMOUTH WITHIN THE COUNTY OF ROCKINGHAM AND FOR REGULATING THE TRADE & NAVIGATION IN THIS STATE–

Whereas it is of great importance that the Trade & Navigation of this State should be properly regulated & duly attended to–and the Laws of this State already in force respecting the same being insufficient for those Purposes–and some further provision appearing to be necessary–

Be it Enacted by the Council & House of Representatives in General Court assembled & by the Authority of the same that there be & hereby is a Naval Office established within the Town of Portsmouth aforesaid for the Port of Piscataqua & the other places within this State for the purpose of entering & Clearing all Ships & other Vessels trading to or from this State (the said Office to be holden by some meet person to be appointed from time to time by the General Court.) and that all the Laws heretofore in force respecting the said Office or the Regulation of the Trade, & Navigation in this State be and hereby are repealed–

And be if further Enacted that it shall be the Duty of the said Officer & he is hereby directed to take Bonds of the Masters or Owners of all such Ships or Vessels trading to or from this State with sufficient Sureties and in adequate penalties for observing the laws respecting Trade & Navigation–take Manifests upon Oath of all Cargoes exported and imported: keep fair Accounts & Entries thereof: give Bills of health when desired: and sign Certificates that the Requisites for qualifying Vessels to trade have been complied with–

The Fees to be taken & received in the said Office to be as follows–Viz[t]

For entering every Ship & Vessel from any port in the Massachusetts Bay	£	o"	9
For clearing out any Ship or Vessel to the same		"	9" o
For entering any Ship or Vessel from any other of the United States		"	18 –
For clearing any Ship or Vessel thereto		"	18" o
For entering every Ship or Vessel from a foreign Voyage	I	"	16 –
For clearing any ship or Vessel for the same	I	"	16 –
For every Register	I	"	16 –
For recording every Register		"	6 –
For endorsing every Register		"	6 –
For every Bond		"	6 –
For a Bill of Health		"	9 –
For a Cocquet		"	6 –
For a permit to unload		"	3 –
For every Pass for the Forts		"	6 –

And be it further Enacted that the Master & Owners of all Ships & other Vessels which are decked of the Burthen of fifteen Tons or upwards shall cause the same to be registered in the Naval Office afores[d] before they proceed on any Voyage, & that the Master or Owners of every smaller Vessel or Boat carrying Merchandize, Provisions, Naval or Military Stores shall cause the same to be entered & cleared at the said Office upon Penalty of forfeiting one half the Value of such Ship or Vessel & Cargo as shall be adjudged by two meet Appraisers to be appointed by the Naval Officer : and that the Master of every Ship or Vessel which shall arrive within the Port of Piscataqua aforesaid or other Place within this State shall make report at the Naval Office aforesaid within twenty four Hours after such Arrival, and shall before breaking Bulk duly enter at the Naval Office & receive a Permit to unlade upon the Penalty of forfeiting the Sum of five hundred pounds–

And be it further Enacted that no Ship or Vessel shall be permitted to Sail out of the Port of Piscataqua afores[d] or other place within this State & proceed to Sea without first having duly cleared at the Naval Office afores[d] & obtained a

Certificate thereof from the Naval Officer : & every Ship or Vessel which shall presume to depart from the port or place aforesaid without having duly cleared & obtained such Certificate as aforesaid–the Master or Owner thereof shall on Conviction thereof forfeit & Pay the one half of the Value of such Ship or Vessel & Cargo to be appraised as afores[d] Provided Nevertheless that no Vessel wholly employed in the fishing Business which shall sail & return in Ninety days–or such Vessels as are only employed as Wood Coasters, & carry no other Article shall be subjected to the aforesaid Regulations (except taking out Registers & a Pass for the Forts at the Naval Office) and all open Boats & small Craft that supply the Rivers from day to day with Fish shall pass free, provided they carry nothing but their proper Stores–

And if any master or Commander of any Ship or other Vessel shall fraudulently exhibit to the Naval Officer a false manifest of any inward or outward bound Cargo, or shall knowingly omit any part of the same, he shall on Conviction thereof forfeit & pay the Sum of five hundred pounds–

And be if further Enacted that the naval Officer for the time being shall before acting in said Office give bond in the sum of four Thousand pounds to the Treasurer of this State with sufficient Sureties for the faithful discharge of the Duties of said Office, & take the oaths required by Law of other civil Officers–& shall keep a fair copy of this Act constantly in his Office for the Perusal of those Persons who do business there & also a Table of the Fees herein mentioned hung up in his said Office–And if any person employed in the Naval Office, shall illegally or unreasonably delay or defer the entering or Clearing of any Ship or other Vessel if applied to in Office Hours, (viz[t] from Nine o'Clock in the morning to one & from two to four o'Clock in the Afternoon) he shall on conviction thereof forfeit & pay the Sum of Ten pounds–

And it shall be lawful for the Naval Officer during the time of any Embargo to go or send a Searcher on board any Ship or other Vessel to see that the Acts & Resolves of the General Court of this State be complied with–And in Case of

Resistance to require the Aid of the High Sheriff of the County where such Ship or Vessel may lay–

And be it further Enacted that if the Commanding Officer of the Fort where the papers are directed shall willingly or negligently suffer any Ship or Vessel to pass out without first having received a permit therefor from the Naval Officer–he shall forfeit & pay the Sum of three hundred Pounds–and the Chief Magistrate of this State for the time being is hereby empowered to inspect the Naval Office Books & papers as often as he shall think necessary & see that they are regularly kept, & also to advise the said Officer in Cases which may be unprovided for by Law–

And be if further Enacted that all Forfeitures in this Act mentioned may be recovered by Action of Debt at the Inferior Court of Common Pleas for the County of Rockingham by the said Naval Officer or any other Person who shall prosecute for the same–the One half thereof to be for the Use of prosecutor & the other half for the Use of this State–and the said Naval Officer is hereby exempted from Business on the Lord's day, and on all Fast & Thanksgiving days appointed by Authority–& also on the Anniversary of American Independence.

Chapter 6, 4 N.H. Laws 350 (1781)

AN ACT TO PRESERVE THE FISH IN PISCATAQUA RIVER

Whereas fishing in Piscataqua river, and in the Harbour near the mouth of said River, with setting Lines, and Seines, hath a great tendency, to obstruct the course of the Codfish, & Smelts, in said River; and the fishing for Bass, & Bluefish, in Winter, hath almost extirpated the Bass, & Bluefish, in said River, so that those fisheries, are in danger of being lost, unless prevented–

Be it therefore enacted, by the Council and House of Representatives, in General Assembly convened, That from, and after, the making of this Act; no person shall be allowed, to fish in said River, or harbour, or any of the branches thereof, within this State, where the Tide ebbs and flows, with any Seine, or setting Line, for any fish whatsoever–And no person shall by any way or means whatsoever, catch, kill, or destroy, any Bass or Bluefish, in said River, or the Branches aforesaid, from the first day of December, to the first day of April, annually; on pain that any and every person offending in any of the particulars aforesaid; shall forfeit, & pay, for every offense the sum of Three Pounds, of the new Emission To be recovered by Bill, Plaint, or information, or Indictment of the Grand Jury, one half to the use of the County where the Offence is committed and the other half to the Informer, in any Court of record--And any Person or Persons, are hereby authorized, to destroy any Seine, or setting Line, found fishing, or set for fishing, in said River, & harbour, within this State. And in case of being sued therefor, may plead the general issue, and give the special matter in evidence, and shall recover double Costs–

And whosoever shall knowingly buy, or sell, any Smelts, Bass, Bluefish, or Codfish, taken contrary to this Act, shall forfeit Ten Shillings like money, to be recovered by Action, or information, before a Justice of the peace, for the nse of the Informer–

This Act to continue and be in force, for the Term of Three years and no longer.

Chapter 13, 4 N.H. Laws 557 (1784)

AN ACT TO ALTER AND EXTEND THE ACT ABOUT POWDER-MONEY

Whereas the act entitled, "An Act about Powder-Money," directs that the duty therein mentioned, should be paid in money or powder, which alternative is found inconvenient and as doubts have arisen, what vessels should be denominated foreign vessels within the meaning of said Act to remedy which inconvenience, and remove such doubts :

Be it Enacted by the Council & House of Representatives for said State in General Assembly convened, That, the said act shall extend to and be construed to extend & comprehend all vessels not belonging to any subject or subjects of any of the United States : And it is further Enacted by the authority afores[d] that every ship or vessel to which said act shall be so construed to extend shall in future pay to the naval officer of this State, two shillings – ton in money, and not in powder as mentioned in said Act, which money shall be paid quarterly by the said Naval officer into the Treasury of the State.

Chapter 20, 5 N.H. Laws 35-36 (1784)

AN ACT IN ADDITION TO AN ACT INTITLED AN ACT FOR ESTABLISHING A LIGHT HOUSE PASSED APRIL THE NINE ONE THOUSAND SEVEN HUNDRED AND EIGHTY FOUR --

Whereas no duty for Light money is laid by said act on any Vessels but such as enter and clear at the Naval office and Whereas Vessels coming into the Harbour for the sole purpose of anchoring receive as much benefit from the light as those which enter at said Naval Office–Therefore Be it Enacted by the Senate and House of Representatives in General Court convened that every vessel from fifteen to thirty Tons burthen which shall come and anchor in said Harbour only without entering at said Naval office shall pay the sum of nine pence every Vessel from thirty to fifty Tons burthen the sum of two Shillings every vessel from fifty to one hundred tons burthen Six shillings every Vessel from one hundred to one hundred and fifty Tons burthen Eight Shillings and all Vessels of more than one hundred and fifty Tons burthen Twelve shillings for light money which shall be paid to the Naval officer or some person deputed by said Naval Officer for that purpose before such Vessels be permitted to pass the Fort–

Chapter 5, 5 N.H. Laws 73 (1785)

AN ACT FOR REGULATING PILOTAGE IN THE PORT OF PISCATAQUA.

Whereas frequent & heavy Loses have been sustained & Navigation greatly Injured for the want of a well Regulated Pilotage in the harbour aforesaid

Be it Enacted by the Senate & House of Representatives in general Court Convened That the President with advice of Council be and hereby is empowered & requested As soon as may be to appoint a Suitable person as a pilot for the harbour aforesaid and to give the person so Appointed a Branch or Warrant for the due Execution of his office with power of Substitution in certain cases to be therein prescribed and such Deputies as the said Branch pilot shall depute shall be by him reported to the President for his Approbation

And be it further Enacted by the Authority aforesaid that the pilot and his deputies appointed as aforesaid shall before his Entering upon the business of his Office take the following Oath or Affirmation before some Justice of the Peace.

You A B. do swear or affirm (as the Case may be) That you will from time to time truly & Faithfully perform the Duties of a pilot for the harbour of Piscataqua according to your best Skill & Judgment agreeably to the Law of this State So Help you God.

And the said branch pilot & his deputies shall Enter into Bonds with sufficient Sureties to the Treasurer of this State in the Sum of One thousand pounds Each for the due performance of the trust reposed in them & the Branch pilot being commissioned & qualified as aforesaid is hereby Empowered & directed by himself or his deputy to take Charge of any Vessel or Vessels drawing Nine feet of Water or upwards (Coasting & Fishing Vessels Excepted) bound into or out of the port aforesaid & shall pilot such Vessell or Vessells into and out of the port Aforesaid first shewing to the Master or Masters thereof his Branch or Warrant & Acquainting him or them of his fees.

And Be it further Enacted by the Authority aforesaid that the Cruizing Ground of the pilot or his deputy for the port Aforesaid be & hereby is Limited in manner following Viz beginning from the Ragged Neck so called in Rye to the South West of the harbour aforesaid from thence Easterly to the Middle Ground between the Islands of the Shoals & the harbours mouth & as far as the Easternmost of the Sisters so called & the Branch pilot & Each of his deputies shall always keep a suitable Boat in good Repair.

Chapter 16, 5 N.H. Laws 349 (1789)

AN ACT TO PRESERVE THE FISH IN PISCATAQUA RIVER, AND THE BRANCHES THEREOF.

Whereas the fishing in Piscataqua River & in the harbour near the mouth of said river, with setting lines and seins hath already in a great measure obstructed and turned the course of the Cod fish in said river, and the fishing for Bass and blue fish in winter hath almost destroyed the bass and blue fish in said river and the branches thereof so that these useful fisheries, are in iminent danger of being lost unless prevented by an Act of the General Court.

Therefore be it enacted by the Senate and House of Representatives in General Court convened, That from and after the making of this Act no person shall be allowed to fish in the said river, or harbour, or any of the branches thereof within this State where the tide ebbs and flows, with any sein or setting line for any fish whatsoever excepting Smelts & Shad and no Person shall by any way or means whatsoever catch kill, or destroy any bass or blue fish in said river, or the branches aforesaid from the first day of December to the first of April annually on pain, that any and every person offending in any of the particulars aforesaid shall forfeit and pay for every such Offence the sum of two Pounds, to be recovered by Action or Information, before any Justice of the Peace, within the county where the Offence may be committed, one half to the use of the State, the other half to the informer, and any Person, or Persons are hereby authorized to destroy any sein or setting lines, or Nets set for fishing in said river or the branches thereof excepting those used for catching smelts & Shad, and in case of being sued therefor may plead the general issue, and give the special matter in evidence, and shall recover double costs; and whosoever shall knowingly sell or buy any bass, blue fish or codfish taken contrary to this Act shall forfeit ten shillings, to be recovered by action, or information before a Justice of the Peace for the use of the informer, allowing an appeal from any such Judgment as the law in other cases directs.

Chapter 14, 5 N.H. Laws 766 (1791)

AN ACT DECLARING THE LIMITS & BOUNDARIES OF THE SEVERAL COUNTIES IN THIS STATE.

Be it enacted by the Senate and house of Representatives in General Court convened that the division of this State into five Counties by the names of Rockingham, Strafford, Hillsborough, Cheshire and Grafton be and hereby is declared and established as follows, namely –

The County of Rockingham is bounded as follows, beginning at the mouth of Piscataqua River and running up the same to the Easterly corner of Newmarket including the River and from thence Northwesterly by the easterly and northerly side lines of Newmarket, Epping, Nottingham, Northwood, Pitsfield, Chichester, Loudon, Canterbury and Northfield to the River Merrimac, and down the same to the line of Concord including the River, then round the westerly line of Concord & Bow to Merrimac River, thence down the same to the North-west corner of Derryfield, thence by the Northerly and easterly lines of Derryfield and the Easterly lines of Litchfield and Nottingham west to the State line, thence by said line to the Sea, thence by the Sea to the bounds first mentioned, including all that part of the Isle of Shoals which belongs to this State. –

. . .

Chapter 6, 6 N.H. Laws 12 (1792)

AN ACT TO PREVENT OBSTRUCTIONS AND IMPEDIMENTS TO NAVIGATION IN THE RIVER PISCATAQUA AND HARBOUR OF PORTSMOUTH.

Whereas masters and owners of Vessels or persons belonging to them, boatmen and others have frequently thrown out ballast and other anoyances from Vessels and boats, as well as from the Shore or bank into said River and Harbour, tending to fill up or lessen the Channel, and obstruct the passage near the wharves, to the detriment and obstruction of Navigation; for remedy whereof;

Be it Enacted by the Senate and House of Representatives in General Court convened; That from and after the first day of August next, no refuse whatever shall be cast or thrown into Said Harbour or said River within the Limits hereafter mentioned, excepting such only as being naturally carried off by the Current does not tend to form or promote the obstructions aforesaid.-

And if any Person shall thereafter unlade cast or throw out of any Ship Vessel or Boat of any kind, or from the shore of Bank or from any Wharf any ballast, rubbish, Gravel, Earth, Stone, dirt, ashes, or filth, into said Harbour or into said River within the following Limits, Viz. From the Light house at the entrance of said Harbour, up said River to Boiling Rock so called, or shall be aiding or assisting therein, every such Person, shall for every such offence forfeit and pay a sum not less than twenty nor more than forty Shillings, to be recovered by action complaint, or information before any Justice of Peace or Court of Record proper to try the Same, The one half of which sum shall be to the complainant, and the other half of the prosecutor.

And the Town of Portsmouth shall annually at the meeting for the choice of Town officers, or at any other Legal Town Meeting, choose a discreet Person, to oversee and Superintend said Harbour and said River within the Limits afore-

said whose peculiar business and duty it Shall be, to See that this act be observed, and to prosecute any breaches thereof, which Officer shall be called the Harbour master

Chapter 13, 6 N.H. Laws 578 (1799)

AN ACT EMPOWERING THE INHABITANTS OF THE TOWN OF PORTSMOUTH TO APPOINT HEALTH OFFICERS, AND FOR PREVENTING NUISANCES IN SAID TOWN–

Section 1st Be it Enacted by the Senate and House of Representatives in General Court convened, that the Inhabitants of the Town of Portsmouth qualified to vote for Town Officers, shall at the annual Town Meetings held for the Choice of Town Officers, or at any other Town Meeting duly warned and held for the purpose, choose and appoint by Ballot three suitable and proper persons, to be health Officers in said Town,...

Section 2nd And Be it Further Enacted, that it shall be the duty of said Health Officers, and each of them to search for, and examine into, all nuisances, or other Causes injurious, or dangerous to the health of the Inhabitants of said Town, created, or occasioned by Stagnant waters, drains common Sewers, Slaughter houses, tan Yards, docks, necessaries, or any putred Substances, or by any other Causes whatever– And whenever the said Health Officers, or any two of them, shall in their opinion have knowledge of, or reasonable Cause of suspicion, that any Nuisance or putred Matter, or any substance, or thing, injurious to the health of said inhabitants, is lodged in any dwelling House, warehouse, Store, Shop, Cellar, out House, or enclosure, in said Town, or in any ship, or Vessel in the Harbour of said Town, they shall forthwith make report on oath or affirmation before some Justice of the Peace or other Magistrate of such Knowledge, or reasonable Cause of Suspicion thereof, who shall grant, and hereby is authorised to grant to such Health officers a warrant to search and examine the Same, and the said Health Officers or any two of them, shall for that purpose and by virtue of said Warrant, have full power and authority forcibly to enter in the day time, and search and examine such Dwelling house, ware house, Store, shop, Cellar, out House,

enclosure, ship or Vessel, as the case may be, where such reasonable cause of suspicion exists– . . .

Section 6th And Be it Further Enacted, that whenever any Ship or Vessel shall arrive at the Port or Harbour of Portsmouth, after the fifteenth Day of May, and before the first day of November in any year, from any Country, place, or Port, subject to the Yellow Fever, or any Malignant pestilential contagious disorder, or where the Yelow Fever, or any Malignant contagious Disorder is usually or often Prevalent, it shall be the Duty of Said Health Officers or any one of them immediately to examine into the state and circumstances or such ship, or vessel, and it if shall be the opinion of said Health Officers or any two of them that such ship or vessel her Cargo or any person on board of the same, is infected with any such Malignant contagious disorder, and that her coming to, or remaining at, or near any of the wharves, or Compact parts of said Town, would be injurious, or Dangerous, to the health of said Inhabitants, it shall be the duty of said Health Officers or some two of them, by a writing under their hands, to order and direct the owner or owners, Master, or Commanding officer of such ship, or vessel, to remove such ship, or vessel, to some place of safety not exceeding three Miles distance from said Town, in such order to be specified, there to remain to Cleanse and purify, such Ship, or Vessel, and her Cargo, for such a term and space of time not exceeding thirty Days, as shall be limited and spicified in such order– . . .

Section 7th And Be it Further Enacted, that all the expences created or incurred by said Health Officers in the execution of their duty shall be borne and paid by the said Town of Portsmouth for which the said Health Officers from time to time may draw orders on the Select Men of Said Town, and the Said Health Officers shall be entitled to receive a proper Compensation from said Town,. . .

Chapter 53, 7 N.H. Laws 249 (1803)

AN ACT TO CAUSE THE SEVERAL TOWNS, PARISHES AND PLACES WITHIN THIS STATE TO BE SURVEYED FOR THE PURPOSE OF OBTAINING A MAP OF THE STATE –

Be it enacted by the Senate and House of Representatives in General Court convened, that it shall be the duty of the several towns within this State, to cause an accurate survey of the same to be made, and transmit a Map thereof to the Secretary of this State on or before the first Wedneaday of November One thousand eight hundred & five, containing the exact limits of said towns by careful admeasurement, together with a discription of all public Roads passing through the same, also the rivers, falls and principal streams, ponds lakes and mountains, and the names of adjoining towns, with the extent said towns adjoin on their own towns; the whole to be protracted by a Scale of two hundred rods to an inch, on a horizontal line; and all disputed lines shall be distinctly marked.

And be it further enacted That the expence of the aforesaid Surveys and Maps and forwarding the same to the Secretary shall be defrayed by the several towns respectively, and that the Selectmen of the several towns in this State shall be and hereby are empowered and directed to assess the buildings and unimproved lands owned by Non Residents in their respective towns and places their just proportion of the taxes raised for the payment of the expences aforesaid, and the said taxes upon the lands and buildings of Non Residents shall be assessed and collected in the same manner that the taxes to which the lands and buildings of Non Residents are by the existing laws of this State now liable to be assessed and collected –

And be it further enacted that if any town within this State shall neglect to make a Survey of the Same according to the directions of this Act, or to return a Map thereof to the Sec-

retary of this State by the said First Wednesday of November one thousand eight hundred & five, such town shall forfeit and pay the Sum of One hundred and fifty dollars to be recovered by an extent from the Treasurer for the use of the State

And be it further enacted, that in all cases where towns are uninhabited, or have not more than fifteen rateable polls, it shall be the duty of the proprietors of such town to transmit a Map of the same under the same penalty and Subject to the same Rules and regulations as are heretofore expressed in this Act –

And be it further enacted That the Treasurer by & hereby is directed to furnish the Selectmen of every town in this State, for the use of their respective towns, with a Map of the State, as soon as the same can be obtained from said Surveys, at the expence of the State –

Chapter 154, 1991 N.H. Laws 207-08

A JOINT RESOLUTION CONCERNING THE SETTLEMENT OF THE PORTSMOUTH, NEW HAMPSHIRE NAVAL SHIPYARD AND INNER PORTSMOUTH HARBOUR BORDER DISPUTE BETWEEN NEW HAMPSHIRE AND MAINE

Whereas, there presently exists a border dispute between the state of New Hampshire and the state of Maine concerning the location of the interstate boundary in the vicinity of the Portsmouth, New Hampshire Naval Shipyard and inner Portsmouth Harbor; and

Whereas, the attorney general of New Hampshire has stated his determination that the historical record provides no evidence that the actual location of the boundary decreed by King George II in 1740 has ever been determined in the vicinity of the Portsmouth, New Hampshire Naval Shipyard and inner Portsmouth Harbor; and

Whereas, the governor of New Hampshire has asked the attorney general of New Hampshire to consider all appropriate avenues to resolve the boundary issue, up to and including action in the United States Supreme Court; now, therefore, be it

Resolved by the Senate and House of Representatives in General Court convened:

That the attorney general of New Hampshire shall consider all appropriate avenues to resolve the boundary issue, including action in the United States Supreme Court and to locate and definitively establish the interstate boundary in the vicinity of the Portsmouth, New Hampshire Naval Shipyard and inner Portsmouth Harbor; and

That no agreement or consent decree concerns resolution of the border dispute be allowed to take effect unless approved by the house of representatives and senate of the state of New Hampshire.

[Approved May 20, 1991.]

Chapter 264, 1994 N.H. Laws 297-98 ("Settlement Act")

AN ACT DIRECTING THE ATTORNEY GENERAL TO PURSUE SETTLEMENT OF THE PORTSMOUTH, NEW HAMPSHIRE NAVAL SHIPYARD AND INNER PORTSMOUTH HARBOR BORDER DISPUTE BETWEEN NEW HAMPSHIRE AND MAINE.

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

264:1 Findings. In directing the attorney general to pursue settlement under section 2 of this act, the general court makes the following findings:

I. Jurisdiction and control over the whole of the Piscataqua River is and always has been entirely within the county of Rockingham and this state.

II. Complete dominion and ownership of the tidal waters and submerged lands of the whole of the Piscataqua River, and including its Portsmouth Harbor, are solely vested in the sovereign people of the state of New Hampshire, encumbered only by the national navigational servitude over the river and its harbor as a navigable inland waterway and arm of the sea.

III. The Piscataqua River and those geographic features located within it are of immense value to New Hampshire.

IV. The state of New Hampshire holds absolute right and title to those lands submerged under the navigable waters of the whole of the Piscataqua River in trust for the people of the state.

V. The public trust in the Piscataqua River for the public use of the people of this state may only be ensured by the adequate protection, management, and control by the state over the entirety of the river and its submerged lands in which the whole of the people of this state are interested.

264:2 Attorney General Directed to Pursue Settlement. The attorney general shall pursue settlement of the border dispute between the state of New Hampshire and the state of Maine concerning the establishment of the interstate boundary in the vicinity of the Portsmouth, New Hampshire Naval Shipyard and inner Portsmouth Harbor, as recommended by the legislature in 1991, HJR 1. In pursuing such settlement, the attorney general shall affirm the findings of the general court under section 1 of this act. No agreement, undertaking or stipulation by any officer, representative, attorney or agent of the state of New Hampshire, which would have the effect of establishing any boundary line inconsistent with such findings, shall bind the state of New Hampshire, unless such agreement, undertaking or stipulation is approved by the general court through legislation. The attorney general shall submit annual reports to the governor, the senate president, and the speaker of the house on or before June 1, 1994, and every year thereafter on June 1 until the issue is resolved, detailing the progress made in such settlement efforts.

264:3 Effective Date. This act shall take effect upon its passage.

[Approved June 2, 1994.]

[Effective Date June 2, 1994.]

Instructions to Governor Benning Wentworth, 2 N.H. Laws 608, 629 (1741)

Instructions to Benning Wentworth Esq[r] His Majesty's Governor and Commander in Chief in and over the Province of New Hampshire in New England in America.... *

. . .

70. Whereas An Act was past in his Majesty's Province of New Hampshire in the Year 1702, Entituled *An Act about Powder Money*, notwithstanding which it does not appear whether the said Duty has been regularly collected in the said Province, pursuant to the said Act, It is therefore His Majesty's Will & Pleasure, and You are hereby directed & required to transmit an Account to the Commissioners for Trade & Plantations in what manner the said Acts have been executed & whether any & what Quantities of Powder have been annually collected by Virtue thereof for seven Years last past, & to take due Care, that the said Duty be well & duly collected for the future; and You are hereby also further directed & required to transmit every six Months, to the said Commissioners for Trade & Plantations an account of the particular Quantities of Powder collected under the said Act, in your Government & also a Duplicate thereof to the Master Gen[l] or principal officers of his Majesty's Ordnance.

* A draft, dated in margin 1741, July 21 and August 13.

Trade Instructions to Governor Benning Wentworth, 3 N.H. Laws 281, 293-4, 298-99 (1761)

. . .

9th You shall every three Months or oftner, or otherwise as there shall be Opportunity of Conveyance, transmitt to the Commissrs of Our Treasury, or Our High Treasurer for the Time being, to Our Commissrs for Trade and Plantations, and to the Commissrs of Our Customs in London, a List of all Ships and Vessels trading in the said Province, according to the form and Specimen hereunto annexed, together with a List of the Bonds taken, pursuant to the Act passed in the 22d and 23d Years of King Charles the 2d's Reign; entittled *An Act to prevent Planting Tobacco in England and for regulating the Plantation Trade;* and you shall cause Demand to be made, of every Master at his Clearing, of an Invoice of the Contents and Quality of His Lading &c, according to the Form hereunto also annexed, and to Inclose a Copy thereof, by some other Ship, or for Want of such Opportunity, by the same Ship under Cover, Sealed, and Directed to the Commissioners of Our Treasury, or Our High Treasurer for the Time being, to Our Commissioners for Trade & Plantations, and to the Commissrs of Our Customs in London, and send another Copy of the said Invoice, in like manner, to the Collector of that Port in this Kingdom for the time being, to which such Ship shall be said to be bound.

. . .

21. Whereas by the aforesaid Act, for preventing Frauds and regulating Abuses in the Plantation Trade, it is provided, for the more effectual Prevention of Frauds; which may be used to elude the Intention of the said Act, by colouring Foreign Ships under British Names, That no Ship or Vessel shall be deemed, or pass as a Ship of the Built of Great Britain or Ireland, Guernsey, Jersey or any of Our Plantations in America, so as to be qualified to trade to, from or in any of Our said Plantations, until the Person or Persons claiming Property in such ship or Vessel, shall register the same in

manner thereby directed ; You shall take Care, that no Foreign built Ship, be permitted to pass as a Ship belonging to Our Kingdom of Great Britain or Ireland, until Proof be made upon Oath, of one or more of the Owners of the said Ship, before the Collector or Comptroller of Our Customs, in such Port to which she belongs, or upon like Proof before Yourself, with the principal Officer of Our Revenue, residing in Our foresaid Province under Your Government, if such Ship shall belong to the said Province which Oath You and the Officers of Our Customs respectively, are Authorized to administer, in Manner thereby directed, and being attested by you and them, so administring the same and registred in due Form, according to the specimen hereunto annexed, You shall not fail immediately to transmit a Duplicate thereof, to the Commissioners of Our Customs in London, in Order to be entred in a general Register, to be there kept for that Purpose, with Penalty upon every Ship or Vessel trading to, from or in any of Our said Plantations in America as aforesaid, and not having made Proof of Her Built and Property, as by the forementioned Act is directed, that she shall be liable to such Prosecution and Forfeiture, as any Foreign Ship (except Prizes condemned in Our High Court of Admiralty) would, for trading with Our Plantations, by the said Law be liable unto, with this Proviso, that all such Ships as have been, or shall be taken at Sea, by Letters of Mart or Reprizal, and Condemnation thereof made in Our High Court of Admiralty as lawful Prize, shall be specially registred, mentioning the Capture and Condemnation, instead of the time and Place of building, with Proof also upon Oath, that the entire Property is British, before any such Prize be allowed the Privilege of a British built Ship, according to the meaning of the said Act, and that no ships Name registred be afterwards changed, without registring such Ship de Novo, which by the said Act is required to be done, upon any transfer of Property to another Port, and delivering up the former Certificate to be cancelled, under the same Penalties and in like method, & in Case of any Alteration of Property, in the same Port, by the Sale of one or more shares in any Ship after

registring thereof, such Sale shall always be acknowledged by endorsement on the Certificate of Register, before two Witnesses, in order to prove, that the entire Property in such Ship, remains to some of Our Subjects of Great Britain, if any Dispute shall arise concerning the same.

An Act For Erecting And Establishing Two New Counties In The Easterly Part Of The County Of York, ch. 7, §1, 4 Acts & Resolves Public and Private of the Province of Massachusetts Bay 372 (1760)

Whereas the great extent of the county of York makes it convenient that two new counties should be erected and established in the easterly part thereof,–

Be it enacted by the Lieutenant-Governour, Council and House of Representatives,

[Sect. 1.] That the county of York aforesaid shall be and it hereby is declared to be bounded on the east, by a line to run from the sea, north-westerly, upon the easterly line of the township of Biddeford, as far as Narraganset[*t*], Number One; from thence, north-easterly on said Narragansett, to the eastermost corner thereof; from thence, northwesterly, on said Narragansett, to the northermost corner thereof; from thence, south-westerly, on said Narraganset[*t*], to Saco River; from thence, up said Saco River as far as Pearsontown extends thereon; and from thence, to run north, two degrees west, on a true course, as far as the utmost northern limits of this province: all the other boundary lines of said county to remain the same as heretofore.

An Act to Prevent the Planting of Tobacco in England, and for regulateing the Plantation Trade, 22-23 Car. 2, ch. 26, §7 (1670-71) (Eng.)

AND whereas many complaints have beene made of shipping and Vessells belonging to some of his Majestyes Collonies in America that contrary to the intent and meaneing of this and other aforementioned Lawes they have brought and transported the said Commodities to diverse parts of Europe and there unloded the same, Bee it further enacted by the authoritie aforesaid That the Governours or other Commanders in Cheife of his Majestyes respective Plantations doe once a yeare at least make a Returne to his Majestyes Officers of his Customes in the Port of London, or to such other person or persons as his Majestie shall appoint to receive the same a List of all such Shipps or Vessells as shall lade any of the said Cōmodities in such Plantations respectively ; as alsoe a List of all the Bonds taken by them ; And in case any Shipp or Vessell belonging to any of his Majestyes Plantations, which shall have on board her any Sugars, Tobacco, Cotten Woole, Indicoes, Ginger Fusticke or other dying wood shall be found to have unladed in any port or place of Europe other then England, Wales, or the Towne of Berwicke upon Tweede, That such Shipp or Vessell shall be forfeited with all her Guns, Tackell, Apparell, Ammunition, Furniture and ladeing to be recovered and divided as aforesaid. And that it shall and may be lawfull for any person or persons to prosecute such Shipp or Vessell in any Court of Admiralty in England, the one moyety of the forfeiture in case of condemnation to be to his Majestie his heires and successors, and the other moyety to such prosecutor or prosecutors thereof.

An Act for the incouragement of the Greeneland and Eastland Trades, and for the better secureing the Plantation Trade, 25 Car. 2, ch. 7, §6 (1672) (Eng.)

. . .

AND for the better collection of the severall Rates and Dutyes aforesaid imposed by this Act, Bee it enacted and it is hereby further enacted by the authoritie aforesaid That this whole busines shall bee ordered and mannaged, and the severall Dutyes hereby imposed shall be caused to be leavyed by the Commissioners of the Customes in England, now and for the time being by and under the authoritie and directions of the Lord Treasurer of England or Commissioners of the Treasury for the Time being.

An Act for preventing Frauds and regulating Abuses in the Plantation Trade, 7-8 Will. 3, ch. 22, §16 (1695-96) (Eng.)

. . .

[AND for a more effectuall prevention of Frauds which may bee used to elude the Intention of this Act by colouring Foreigne Shipps under English Names Bee itt further enacted by the Authority aforesaid That from and after the Five and twentieth day of March which shall bee in the Yeare of our Lord One thousand six hundred ninety eight noe Shipp or Vessell whatsoever shall bee deemed or passe as a Shipp of the Built of England Ireland Wales Berwick Guernsey Jersey or of any of His Majesties Plantations in America soe as to bee qualifyed to trade to from or in any of the said Plantations untill the Person or Persons claymeing Property in such Shipp or Vessell shall register the same as followeth (that is to say) If the Shipp att the tyme of such Register doth belong to any Port in England Ireland Wales or to the Towne of Berwick upon Tweed then Proofe shall bee made upon Oath of One or more of the Owners of such Shipp or Vessell before the Collector and Comptroller of His Majesties Customes in such Port or if att the tyme of such Register the Shipp belong to any of His Majesties Plantations in America or to the Islands of Guernsey or Jersey then the like Proofe to bee made before the Governour together with the Principall Officer of His Majesties Revenue resideing on such Plantation or Island which Oath the said Governours and Officers of the Customes respectively are hereby authorized to administer in the Tenour following (vizt)

Report of His Majesty's Commissioners ... to Settle, Adjust and Determine the Respective Boundaries of the Provinces of the Mass^a^ Bay & New Hamp^r^ (1737), 19 N.H. Provincial Papers 391-92

Hampton Septr the 2 1737 at a Court of Commiss^rs^ Appointed by His Majesty's Commission under the Great Seal of Great Britain to Settle Adjust & Determine the Respective Boundaries of the Provinces of the Mass^a^ Bay & New Hamp^r^ in New England then & there held.

In Pursuance of His Majesty's afores^d^ Commission the Court took under Consideration the Evidences, Pleas & Allegations offerd & made by Each party referring to the Controversy depending between them and upon mature Advisement on the whole, a doubt arose in point of law & the Court thereupon came to the following resolution viz That if the Charter of King William & Queen Mary Dated Octob^r^ 7th in the third Year of their Reign Grants to the Province of the Mass^a^ Bay all the Lands which were Granted by the Charter of King Charles the First Dated March 4th in the Fourth Year of his Reign to the late Colony of the Mass^a^ Bay, lying to the Northward of Merrimack River then the Court Adjudge & Determine, that a Line Shall run Parallel with the Said River at the Distance of three English Miles North from the Mouth of Said River beginning at the Southerly Side of the black Rocks So called at Low water mark & from thence to run to the Crotch or parting of the Said River where the Rivers of Pemigewasset & winnepiseoke meet and from thence due North three English Miles & from thence due West towards the South Sea until it meets with His Majestys other Governments– which shall be the boundary or Dividing Line between the Said Prov^s^ of the Mass^a^ Bay & New Hamp^r^ on that Side– But if otherwise then the Court Adjudge & determine that a line on the Southerly Side of New Hamp^r^ begining at the Distance of three English miles North from the Southerly Side of the black Rocks afores^d^ at Low Water Mark & from thence running due West up into the main land towards the South Sea until it meets with His Majestys other

Governm^{ts} Shall be the boundary Line between the Said Provinces on the Side afores^{d}–which point in doubt with the Court as afores^{d} they Humbly Submit to the wise Consideration of His Most Sacred Majesty in his Privy Council to be determined according to his Royal Will & Pleasure therein–

And as to the Northern Boundary between the Said Provinces the Court Resolve & Determine that the Dividing Line Shall pass up thro$^{'}$ the mouth of Piscataqua Harbour & up the Middle of the River into y^{e} River of Newichwannock (part of which is now called Salmon Falls) & thro$^{'}$ the Middle of the Same to the furthest head thereof & from thence North two Degrees Westerly until one hundred & twenty Miles be finished from y^{e} Mouth of Piscataqua Harbour Afores^{d} or until it meets with His Majestys other Governm^{ts} and that the Dividing line shall part the Isles of Shoals run thro$^{'}$ the Middle of the Harbour between the Islands to the sea on the Southerly Side & that the Southwesterly part of the Said Islands Shall lye in & be Accounted part of the Prov. of New Hamp^{r} & that y^{e} North Easterly part thereof shall lie in & be Accounted part of the Prov. of the Mass^{a} Bay & be held & Enjoyed by the Said Prov^{s} Respectively in the Same manner as they Now do & have heretofore held and Enjoyd the Same– And the Court do further Adjudge that ye Cost & Charge arising by taking out the Commission as also of the Commiss^{rs} & their officers Viz the two Clerks Surveyer & Waiter for their Travel^{g} Exp^{s} & attendance in the Execution of the Same be Equally born by the Said Prov^{s}

Ph Livingston
Will: Skene
Eras: Ja^{s} Philipps
Otho Hamilton
John Gardner
John Potter
George Cornell

Decree of the King in Council (1740), 2 N.H. Laws 790-94 app.

At the Court at St James's the 9th day of April 1740 Present

The Kings most Excellent Majesty

Arch Bishop of Canterbury	Duke of Ancaster
Duke of Richmond	Duke of Newcastle
Duke of Argyll	Earl of Ilay
Duke of Athol	Mr Chancellor of the Exchequer

Upon reading at the Board a Report from the Right Honourable the Lords of the Committee of Council for hearing Appeales from the Plantations dated the 10th of last Month in the words following – Vizt.

"Your Majesty having been pleased by Your Order in Council of the 6th of February 1737 to referr unto this Committee the humble Petition and Appeale of John Thomlinson of London Esqr Agent for the House of Representatives of Your Majestys Province of New Hampshire for and on behalf of Your Majesty and of Your Loyal Subjects of Your Province of New Hampshire Setting forth (amongst other things) That the said Province being on both sides enclosed between the several Parts of Your Majestys other Province of the Massachusets Bay was daily encroached and usurped upon by its Populous and Powerful Neighbours of the Massachusets Bay both in matters of Property and Government and without Your Majestys Interposition would soon be Absorbed and lost as well in Disinherision of Your Majestys Crown as to the utter Ruin of Your Faithfull Subjects and Tenants in New Hampshire who hold immediately of and under Your Majesty, That after bearing a continued Series of Encroachments and Oppressions for a great length of time from the Province of the Massachusets Bay, the Representatives of Your Majestys Province of New Hamp-

shire appointed Mr Rindge their Agent to make humble Application to Your Majesty that a Commission might issue for Settling the Bounds between the said two Provinces, That after several Attendances and hearings as well of the petitioner as of the Agent for the Massachusets Bay before the Attorney and Sollicitor General the Lords Commissioners for Trade and Plantations and a Committee of the Lords of Your Majestys Most Honourable Privy Council Your Majesty was pleased by Your Order in Council of the 22^{d} of January 1735 *to Direct that Commiss^{rs} should be appointed to Mark out the Dividing Line between the said Provinces* and that due care should be taken that Private Property might not be Affected thereby – And that Your Majesty was afterwards pleased by another Order in Council of the 9th of Feb'ry 1736 to Direct that a Commission should be prepared and past under the Great Seal for Authorizing such Commiss^{rs} to meet within a limited time and Mark out the said Dividing Line with Liberty to either Party who should think themselves aggrieved by the Determination of the said Commiss^{rs} to Appeale therefrom to Your Majesty in Council – Which Commission having accordingly issued – The said Commiss^{rs} did in pursuance thereof meet at Hampton in the Province of New Hampshire, and on the 2^{d} of September 1737 made their Report or Determination. And the said Province of New Hampshire conceiving themselves aggrieved by some parts of the Determination of the said Commissioners have brought this their humble Petition of Appeale therefrom to Your Majesty in Council and humbly pray to be heard thereupon and that such Orders may be made for Settling the Just Bounds of the Charter Government of the Massachusets Bay and for the Relief of Your Majestys Subjects in New Hampshire as to Your Majestys great Wisdom and Justice shall seem meet – And Your Majesty having also been pleased by another Order in Council of the 26th of July 1738 to referr unto this Committee the humble Appeale or Exception of Your Majestys Province of the

Massachusets Bay against the final Determination of Your Majestys Commissioners for Settling the respective Boundarys between the Provinces of the Massachusets Bay and New Hampshire as well on the Southern as Northern part of New Hampshire humbly praying for the reasons therein contained that Your Majesty will be graciously pleased to Disallow the said Determination wherein they conceive themselves aggrieved and to continue and Confirm the Ancient Boundarys of the said Province of the Massachusets Bay according to their Claim and that part of the said Determination which is agreable thereto and founded on the Grant and Settlement of Your Majestys Royal Predecessors – The Lords of the Committee in Obedience to Your Majestys said Orders of Reference did on the 5th of this Instant March and again on this day take both the said Petitions of Appeale into their Consideration and having Examined into the Proceedings of the said Commissioners do find that they made their Report or Determination thereupon in the words following – Vizt.

> " 'In pursuance of His Majestys aforesaid Commission the Court took under Consideration the Evidences Pleas and Allegations Offered and made by each Party referring to the Controversy depending between them, And upon Mature Advisement on the whole a Doubt arose in point of Law and the Court thereupon came to the following Resolution Vizt
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> " 'That if the Charter of King William and Queen Mary Dated October the 7th in the Third Year of their Reign grants to the Province of the Massachusets Bay all the Lands which were granted by the Charter of King Charles the First Dated March the 4th in the Fourth Year of his Reign to the late Colony of the Massachusets Bay lying to the Northward of Merrimack River, then the Court Adjudge and Determine That a Line shall run Parrallel with the said River at the Distance of

Three English Miles North from the Mouth of the said River, beginning at the Southerly side of the Black Rocks, so called at Low Water Mark and from thence to run to the Crotch or Parting of the said River where the Rivers of Pemigewasset and Winnepiseokee meet, and from thence due North Three English Miles, and from thence due West towards the South Sea until it meets with His Majestys other Governments, which shall be the Boundary or Dividing Line between the said Provinces of the Massachusets Bay and New Hampshire on that side But if otherwise then the Court Adjudge and Determine, That a Line on the Southerly side of New Hampshire beginning at the Distance of three English Miles North from the Southerly side of the Black Rocks aforesaid at Low Water Mark and from thence running due West up into the Main Land towards the South Sea until it meets with His Majestys other Governments shall be the Boundary Line between the said Provinces on the Side aforesaid; Which Point in Doubt with the Court as aforesaid They humbly Submit to the wise Consideration of His Most Sacred Majesty in His Privy Council, to be determined according to His Royal Will and Pleasure therein. And as to the Northern Boundary between the said Provinces, the Court Resolve and Determine, *That the Dividing Line shall pass up thrô 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 thrô 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 thrô 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 Massachusets 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 – And the Court do further Adjudge that the Cost and Charge arising by taking out the Commission, as also of the Commissioners and their Officers – Viz^{t} The Two Clerks, Surveyor and Waiter for their Travelling Expences and Attendance in the Execution of the same be equally born by the said Provinces./ –

"The Lords of the Committee having Considered the whole Matter and heard all Partys concerned therein by their Counsel learned in the Law Do Agree humbly to Report to Your Majesty as their Opinion *That the Northern Boundarys of the said Province of the Massachusets Bay are and be a Similar Curve Line pursuing the Course of Merrimack River at Three miles Distance on the North side thereof beginnint at the Atlantick Ocean and ending at a Point due North of a Place in the Plan returned by the said Commissioners called Pantucket Falls and a Strait Line drawn from thence due West cross the said River till it meets with Your Majestys other Governments* And that the rest of the Commissioners said Report or Determination be Affirmed by Your Majesty

His Majesty this day took the said Report into Consideration and was pleased with the Advice of His Privy Council to Approve thereof and Doth hereby accordingly Declare Adjudge and Order That the *Northern Boundarys of the said Province of the Massachusets Bay are and be a Similar Curve Line pursuing the Course of Merrimack River at Three Miles Distance on the North Side thereof beginning at the Atlantick Ocean and ending at a Point due North of a Place in the Plan*

returned by the said Commissioners called Pantucket Falls and a Strait Line drawn from thence due West cross the said River till it meets with His Majestys other Governments, And His Majesty doth hereby further Order that *the rest of the Commissioners said Report or Determination be and it is hereby Affirmed –*

Whereof the Governor or Commander in Chief of the said Provinces for the time being as also The respective Councils and Assemblys thereof and all others whom it may concern are to take especial care that His Majestys Commands in this behalf be duly Executed. –

A true Copy Temple Stanyan

Sir Matthew Hale, *De Portibus Maris reprinted in A Collection of Tracts Relative to the Laws of England*, 45, 46-47 (Francis Hargrave, ed., 1787).

. . .

A *port* is an haven, and somewhat more.

1st. It is a place for arriving and unlading of ships or vessels.

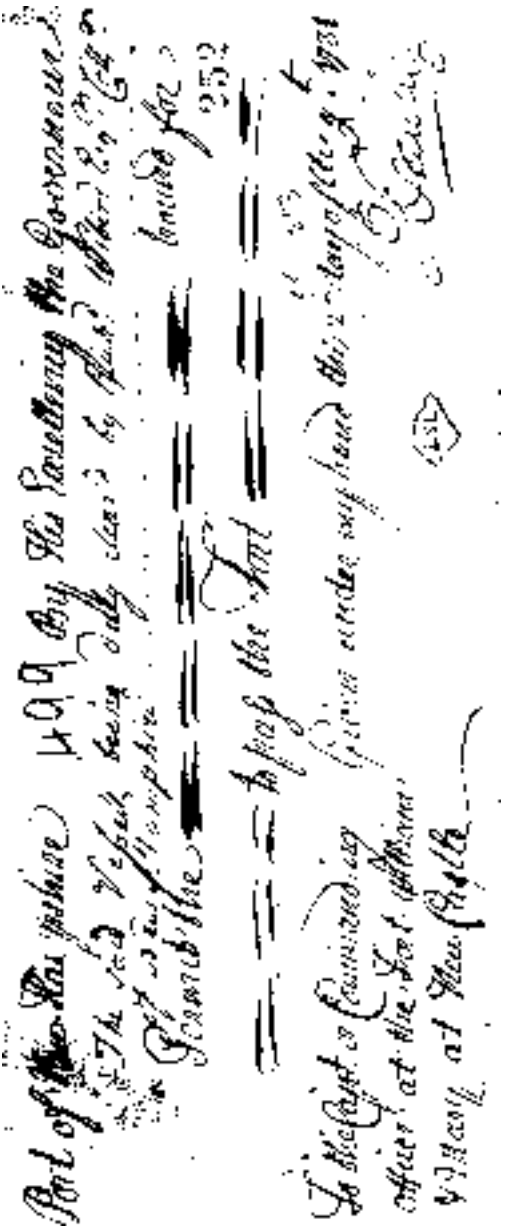
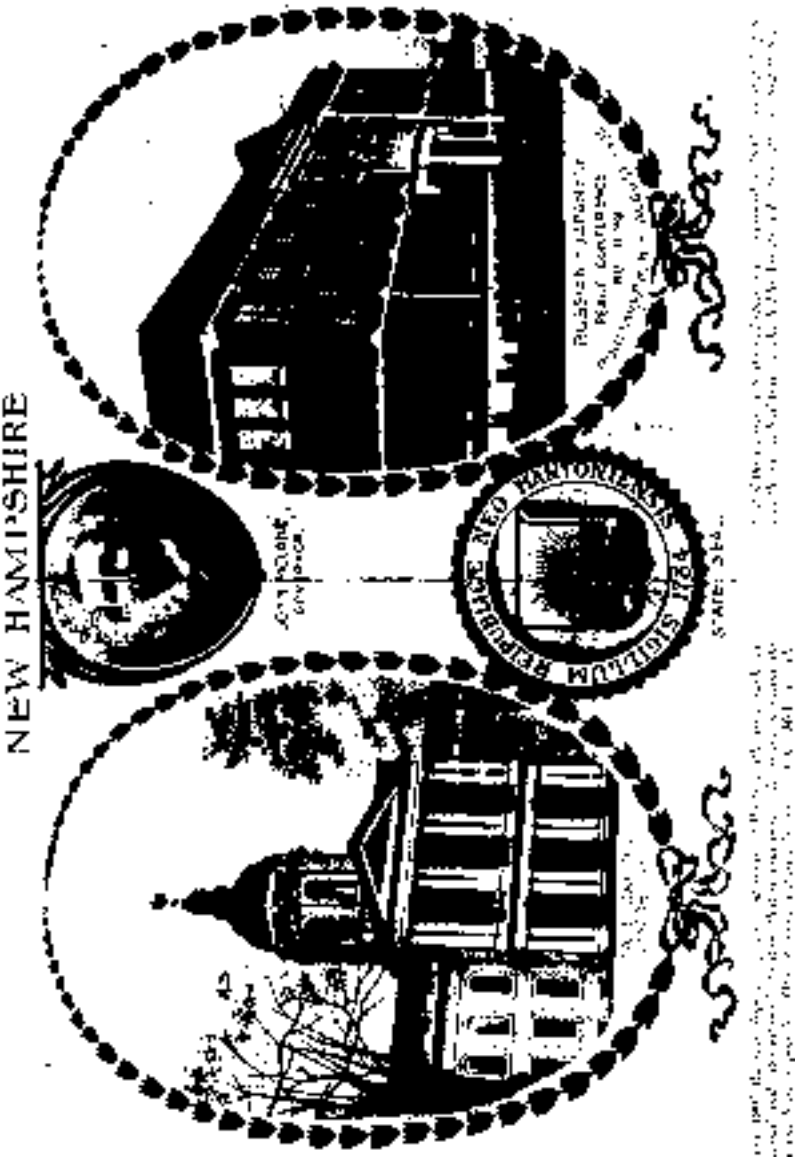
2d. It hath a superinduction of a civil signature upon it, somewhat of franchise and privilege, as shall be shewn.

3d. It hath a *ville* or city or borough, that is the *caput portus*, for the receipt of mariners and merchants, and the securing and vending of their goods and victualling their ships. So that a port is *quid aggregatum*, consisting of somewhat that is natural, viz. an access of the sea whereby ships may conveniently come, safe situation against winds where they may safely lye, and a good shore where they may well unlade; something that is artificial, as keys and wharves and cranes and warehouses and houses of common receipt; and something that is civil, viz. privileges and franchises, viz., *jus applicandi*, *jus mercati*, and divers other additaments given to it by civil authority.

A port of the sea includes more than the bare place where the ships unlade, and sometimes extends many miles; as the port of London anciently extended to Greenwich, in the time of King Edward the First, and Gravesend is also a member of the port of London; the port of Newcastle takes in all the river from Sparhauk to the sea; the like for the extent of Yarmouth, Bristol, &c.

. . .

Photocopy of Form of Let-pass, Port of Piscataqua, U.K. Public Record Office, C.O. 5/873/f252 (c. 1731)



<u>Photocopy of postcard, *reprinted in* Leon Anderson, New Hampshire's Unique Japanese Charitable Fund: 75th Anniversary Treaty of Portsmouth (1980)</u>