

July 31, 2015

Via E-mail/Hand-Delivery

Ms. Luly Massaro
Division Clerk
Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, Rhode Island 02888

In re: Rhode Island Fast Ferry, Inc. – Docket No. D-13-51

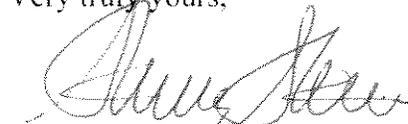
Dear Luly:

On behalf of Rhode Island Fast Ferry, Inc. ("RIFF"), please find an original and four (4) copies enclosed for filing in the above docket:

- 1.) Opposition of Rhode Island Fast Ferry, Inc. to the Motion of the town of New Shoreham for Summary Disposition.
- 2.) Affidavit of Charles A. Donadio, Jr.

Please let me know if you have any questions.

Very truly yours,



ALAN M. SHOER
ashoer@apslaw.com

Enclosures

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS**

In Re: Rhode Island Fast Ferry, Inc.)

Docket No. D-13-51

**OPPOSITION OF RHODE ISLAND FAST FERRY, INC. TO THE MOTION OF THE
TOWN OF NEW SHOREHAM FOR SUMMARY DISPOSITION**

Rhode Island Fast Ferry, Inc. (“RIFF”) hereby submits this opposition to the Motion for Summary Disposition filed by the Town of New Shoreham (“Town”), dated July 20, 2015.

I. INTRODUCTION

Once again, the Town (with Interstate Navigation Company’s (“Interstate”) consent to the Town’s Motion) seeks to block the public from the convenience and necessity for an alternative high speed fast ferry service to the Town of New Shoreham. As was the case more than 15 years ago, the Town complains that a certificate of public convenience and necessity (“CPCN”) cannot be granted where there are unresolved issues related to dockage in the Town. But the Division properly rejected this obstructionist line of attack last time, and should do so again now.

In this new proceeding, the Division has already held that it is “ill-equipped to meaningfully evaluate harbor congestion and dock adequacy issues as a condition-precedent to the issuance of a CPCN.” *In re: Application by Rhode Island Fast Ferry, Inc. for Water Carrier Authority*, Division Docket D-13-51, at 18 (Sept. 24, 2013) (Order in Response to Motions to Intervene) (the “Intervention Order”). Ignoring the Division’s ruling, the Town, once again, tries to put the cart before the horse to incorrectly make harbor congestion and dock adequacy issues the condition precedent to the issuance of a CPCN. The Town, through this Motion for

Summary Disposition, even goes so far as to argue that the Division should not even hold public hearings on RIFF's license application. This effort must be denied.

The Division, in response to similar arguments in response to Motions to Intervene, has cautioned that it "must defer to the CRMC and New Shoreham's Harbormaster concerning matters related to boat docks and ferry congestion in Old Harbor." *Id.* at 17. Nevertheless, RIFF appreciates that, as was the case last time, the Town has concerns regarding the public use of the harbors accessing the Town. These concerns certainly will be heard, and determined, at the appropriate time and before the appropriate forum. But the Division is not the place to *litigate* these matters now. Since pursuant to the law-of-the-case in this very docket, concerns over dockage and harbor congestion are not *material* issues of fact that are relevant in this licensing proceeding, the Town's Motion should be denied.

Moreover, it is worth pointing out again that "the Division has not expected other applicants to invest millions of dollars into a business [or securing all equipment and facilities] before applying for operating authority, and does not intend to do so now." *Interstate Navigation Co. v. Division of Public Utilities & Carriers of the State of Rhode Island*, Nos. C.A. 98-4804, C.A. 98-4766, 1999 WL 813603, at *8 (R.I. Super. Aug. 31, 1999). In fact, the Division has previously held that "given Donadio's proven diligence as a businessman, the Division [was] satisfied that, if he [were] granted a certificate, he will overcome any unresolved financing licensing or other issues that would otherwise prevent him from operating." *Id.*¹

Nevertheless, RIFF recognizes that the Hearing Officer and the other parties may be curious as to what plans RIFF has, and what options RIFF has, in order to secure a place to land

¹ Interstate's expert in the *Interstate* case, Leonard Lardaro, Ph.D, testified in that case that "it might not be a wise investment move for Donadio to spend millions of dollars securing a vessel, office space and equipment and finalizing permits and employment contracts before obtaining the necessary authority to operate." *Interstate Navigation Co.*, 1999 WL 813603, at *7.

in the Town. As discussed below, RIFF has, and will continue, to pursue several options to secure dockage in either the Old or New Harbors of the Town. Putting aside the fact that these dockage issues are not material issues of fact that must be resolved by the Division now, RIFF provides the further analysis below, in order to fully respond to the Town's Motion and to correct the misstatements made by the Town.

II. ARGUMENT

A. SUMMARY DISPOSITION STANDARD

A motion for summary disposition is analyzed under the same standard as a motion for summary judgment under the Superior Court Rules of Civil Procedure. Rule 19(e) of the Division's Rules of Practice and Procedure provides that summary disposition may be granted only if the Hearing Officer determines that there is no genuine issue of material fact to the decision. Similarly, Rule 56(c) of the Superior Court Rules of Civil Procedure provides that summary judgment is granted only if there is no genuine issue as to any material fact. Super. Ct. R. Civ. P. 56(c).

Summary disposition is a "drastic remedy, and a motion for summary judgment should be dealt with cautiously." *Employers Mut. Cas. Co. v. Arbella Protection Ins. Co.*, 24 A.3d 544, 553 (R.I. 2011). Thus, when considering a motion for summary disposition, all facts and all reasonable inferences therefrom must be viewed in the light most favorable to the party opposing the motion. *Delta Airlines, Inc. v. Neary*, 785 A.2d 1123, 1126 (R.I. 2001). Summary disposition is only proper when there is no genuine issue of material fact in dispute. *DeMarco v. Travelers Ins. Co.*, 26 A.3d 585, 605 (R.I. 2011). "[D]isputed issues must be resolved by a trier of fact and are not suitable for summary disposition." *Correio v. Tobin*, 66 A.3d 820, 825 (R.I. 2013) (vacating entry of summary judgment because genuine issues of material fact existed).

Moreover, the determination of whether a party's conduct is reasonable under the facts and circumstances of a case is a question of fact, which cannot be disposed of by summary disposition. *See Empire Acquisition Group, LLC v. Atl. Mortg. Co.*, 35 A.3d 878, 884 (R.I. 2012) (citing *DeMarco v. Travelers Ins. Co.*, 26 A.3d 585, 614 (R.I. 2011)); *see also Gillette of Kingston, Inc. v. Bank of Rhode Island*, C.A. No. WC05-0616, 2006 R.I. Super. LEXIS 51 (R.I. Super. Ct. May 5, 2006). Likewise, summary disposition is ordinarily inappropriate for resolving issues of intent and state of mind. *See Aetna Casualty & Surety Co. v. Farr*, 594 A.2d 379, 381 (R.I. 1991). With this standard of review, RIFF responds as follows to the Town's Motion.

B. THE TOWN'S MOTION SHOULD BE DENIED AS RIFF IS ABLE TO DOCK ITS VESSEL ON BLOCK ISLAND

Putting aside the fact that the dockage issues are not even material to RIFF's licensing proceeding, the Town's argument that it and, by extension, Interstate are entitled to summary disposition of RIFF's CPCN application without hearing, because RIFF has not secured dock space on Block Island should be summarily denied. The Affidavit of Charles Donadio, attached to this Opposition, demonstrates the RIFF has, and will continue to explore, a number of docking options, including one in Old Harbor and one in New Harbor. Moreover, the Hearing Officer made it clear in the May 15, 2015 scheduling conference that RIFF would be required to articulate further its plans for a terminus in Block Island *at the hearings* in this matter, not before. Therefore, as much as the Town and Interstate would like to short-circuit the hearing process, RIFF was clearly left the opportunity to continue to explore its Block Island docking options both during and after the hearings, in the event the Division grants RIFF a CPCN. In the event more details are available before the hearings the Objectors will have adequate notice of

any changes in that regard by way supplemental responses to their Data Requests if the facts should change.

I. RIFF Has the Ability to Dock in Old Harbor

As is evident from the historical documents contained in the Supplemental Response to the Town's Data Request at Deposition (filed on July 14, 2015), and also produced in Exhibit "A" to the Donadio Affidavit, RIFF has the ability to dock its ferry vessel at the South Pier in Old Harbor.² Perhaps the Town will argue that it is the owner in fee of the South Pier and RIFF may not make such use of its property. However, it is worth pointing out and emphasizing now that the South Pier was conveyed to the Town by the federal government subject to the right of "public use" by any and all vessels, not just those vessels the Town sees fit to allow wharfage.

It appears from those documents that at the turn of the last century, shortly after the South Pier was conveyed to the Town, controversy arose over the Town's use of the South Pier by deliberately wharfing its own steamer there in such a way as to prevent all other use. As a result, numerous complaints were filed by the private vessel owners with the U.S. Army Corps of Engineers over a period of ten years, while the initial investigation by a lower ranking officer of the Army Corps of Engineers resulted in an opinion that was at best equivocal.

However, the final reports by the Chief of Engineers and by the Army Judge Advocate General were clear, in that the pier was a "public wharf" dedicated to the Town for "public use" – including use by the complaining private vessel owners. Those reports opined that it is a criminal offense to obstruct the navigable waters of the U.S., which the Town's harbors are, by tying up or anchoring vessels in such a way as to obstruct navigation by the public and that the action by the Town in blockading the South Pier might warrant prosecution under the circumstances. In the specific case cited by Chief of Engineers and the JAG, it appears that the

² The Town's Motion neglects to reference these documents produced in discovery.

Town was anchoring its own vessel at the South Pier so as to obstruct a privately owned steamer from using the “public wharf.”

In fact after these cautionary opinions from the U.S. Army, privately owned ferries, including ferries owned by Interstate Navigation used the South Pier as a landing until at least 1941. The photographs and articles attached to the Donadio Affidavit as Exhibit “B” show not only the MV *George W. Danielson* (the ferry the Town apparently used to blockade the South Pier) docked there, but they also show other ferry’s owned by Interstate Navigation, the MV *Sprig Carroll*, the MV *Westport* and the MV *Block Island* (later renamed the *Yankee*) using the South Pier in the late 1930s and early 1940s.

While the Town may, at the appropriate time, argue that the right of privately owned ferries to make “public use” of the South Pier was never fully resolved and in fact may require further legal determination, this is the same argument it made in Division Docket 98-MC-16 with regard to Island Hi-Speed Ferry’s (hereinafter “IHSF”) right – and ability – to use Payne’s Dock in New Harbor for its operations. This line of argument was summarily rejected by the Superior Court in the IHSF CPCN appeal, and it should be rejected by the Division here as not having any bearing on determination of whether RIFF has the ability to dock at the South Pier in Old Harbor, as will be more fully developed, *infra.*, *Interstate Navigation Co.*, 1999 WL 813603, at *3 (“the Division explains that, in a sense, every one of its [CPCN] decisions is conditional” upon the happening of future events). Indeed, as pointed out above, the Division has already reaffirmed this policy here in denying a prior motion to intervene by Cross Sound Ferry, noting that it “routinely issues ‘conditional’ certificates of public convenience and necessity (CPCNs) and certificates of operating authority (COAs) to prospective common carriers.” Intervention Order at 19.

Again, the IHSF proceedings are instructive on this point. In IHSF, both the Town and Interstate challenged the ability of IHSF to land at Payne's Dock in New Harbor on the grounds that the Town's Zoning Ordinance did not permit such a use of the pier facility. Specifically, the Town argued: "Ferries are prohibited from operating with New Harbor by the town's Zoning Ordinances and Comprehensive Plan, and it is well within the Town's jurisdiction to regulate 'management and control of all vessels' by the enactment of Zoning Ordinances. Rhode Island General Laws 46.4-6-6.10 and in Type III waters as defined in the Regulations of the Coastal Resources Management Council". Post Hearing Memorandum of Law of the Town of New Shoreham, Docket 98-MC-16, at page 2, attached hereto as Exhibit 1. Similarly, Interstate argued: "**3. Applicant is not "able"**"...The zoning laws of Block Island will not allow the applicant to dock its vessel at its proposed location in New Harbor. The applicant has not even applied for the necessary CRMC assent for Payne's dock". Interstate Navigation Company's Post-Hearing Brief, Docket 98-MC-16, at page 3, attached hereto as Exhibit 2.

It is significant to note for purposes of this Docket that at the time of its application and at hearing IHSF's ability to wharf its vessel at Payne's Dock was predicated solely upon a simple, one-page, Letter of Intent between the owner of the facility and IHSF. *See Donadio Affidavit.*³ IHSF had no formal lease of the pier and, as Interstate correctly noted, it had made no application to CRMC, or to any other governmental authority for that matter, for use of the pier. *See Donadio Affidavit at ¶ 6.* Nonetheless, the Division found that IHSF was fit, willing and able to conduct the proposed ferry operation for all purposes.

This theme of the IHSF Objectors arose again on appeal in the Superior Court. In fact, Interstate actually argued that its own appeal was not ripe for review, because the Division Order

³ As an alternative to docking in Old Harbor, according to the Donadio Affidavit RIFF intends to continue discussions with Payne's Dock Incorporated to use its facility in New Harbor, if necessary. While this is not RIFF's first choice for Block Island wharfage, it is a viable second option.

granting the IHSF CPCN contained numerous post-issuance conditions that still had to be met before actual operating authority would vest. The Superior Court rejected this effort outright, after ticking off the list of conditions that the Division placed upon IHSF and, once again, observing that at oral argument “the Division explains that, in a sense, every one of its [CPCN] decisions is conditional” upon the happening of future events. *Interstate Navigation Co.*, 1999 WL 813603, at *3.

Of greater significance was the Court’s treatment of the Town zoning/CRMC jurisdictional issue. In the context of its analysis of whether the record contained substantial evidence to support the Division’s finding that IHSF was fit, willing and able, the Court wrote as follows:

Interstate also questions the Division’s finding that Hi-Speed Ferry ‘is fit, willing and able’ to provide the service proposed in its application. According to Interstate, the Division’s Report and Order is clearly erroneous in making the finding because Hi-Speed Ferry had not secured financing, had not purchased a boat, had not hired personnel to run the business and had not finalized other components to offering the ferry service.[]

⁷ For example, Interstate argues that Hi-Speed will never secure the zoning approval, which it contends is necessary, to use Payne’s Dock. Alternatively, Hi-Speed claims that the Town of New Shoreham Zoning board does not have jurisdiction over Payne’s Dock; rather Hi-Speed asserts that the Coastal Resources Management Council (CRMC) has jurisdiction seaward of the mean high water mark. This Court will refrain from addressing these arguments at this time. Since compliance with all necessary government regulations is a condition of the grant, if Hi-Speed Ferry is unable to obtain the necessary permits, then jurisdiction over Payne’s Dock is not an issue.

Interstate Navigation Co., 1999 WL 813603, at *7 & n.7.

As it turned out, IHSF’s position regarding CRMC’s preemptive jurisdiction over Payne’s Dock was correct and a separate Superior Court judgment to that effect was affirmed by the Rhode Island Supreme Court. See *Champlin’s Realty Associates, L.P. vs. Tillson*, 823 A.2d 1162 (R.I. 2003). However, had the Division not been so judicious, and agreed with the

Objectors' attempt to derail the IHSF CPCN on this singular issue, the course of events would have been very different.

The Division in this docket has already ruled that it is "ill-equipped to meaningfully evaluate harbor congestion and dock adequacy issues as a condition-precedent to the issuance of a CPCN" in the Intervention Order. Intervention Order at 18. Similarly, the Division is not the appropriate forum for resolution of RIFF's right to use the South Pier, let alone any other potential sites for dockage. The Town cannot show that there are no genuine issues of material fact that RIFF has no right or ability to dock in Old Harbor. On the contrary, RIFF has shown sufficient facts in that regard. But the Division cannot and should not attempt to resolve that issue now and instead can, as is customary, condition a CPCN Old Harbor terminus upon further documented proof of RIFF's right to land at the South Pier, or some other location.⁴

III. CONCLUSION

Accordingly, since dockage is not a material fact here, or, alternatively, since there is no issue of material fact as to RIFF's ability to dock in Old Harbor because it is an undisputed fact that RIFF has the option of docking in either Old Harbor or New Harbor, the Town's Motion for Summary Disposition must be denied.

⁴ The Division has previously held that "given Donadio's proven diligence as a businessman, the Division [was] satisfied that, if he [were] granted a certificate, he will overcome any unresolved financing licensing or other issues that would otherwise prevent him from operating." *Interstate Navigation Co.*, 1999 WL 813603, at *8.

Respectfully submitted,

RHODE ISLAND FAST FERRY, INC.,
By its Attorneys,



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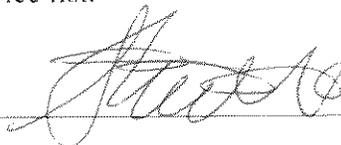
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Dated: July 31, 2015

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2015, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.



EXHIBIT

1

In Re: Island Hi-Speed Ferry, LLC: Docket No. 98-MC-16

POST HEARING MEMORANDUM OF
INTERVENOR THE TOWN OF NEW SHOREHAM
IN OPPOSITION TO APPLICATION

The Town of New Shoreham remains steadfast in its opposition to the application of Hi-Speed. First and foremost, the Town, its residents, businesses and visitors are being served far more than adequately. They are being well served by Interstate.

Secondly, over time, the core of the rate payers has remained and will remain the Island residents - whether persons or businesses - who have invested hundreds of thousands if not millions of dollars which have been converted into the huge capital investment of Interstate evident in the new state of the art vessels. As has been established the core of income is generated by passenger service in the summer and shoulder seasons. The applicant projects its share of the income from this component to be five hundred thousand dollars per year. If Interstate were to loose this kind of income, it would have to either increase its rates or decrease its services to meet its expenses fixed or otherwise. Wherever it is made up in either a decrease in services or an increase in rates it would fall disproportionately on those most frequent and dependent rate payers, the residents of the Town of New Shoreham.

Thirdly, the Town urges the Division not to find New Harbor to be a different destination than Old Harbor. It is not. On our small Island, the harbors are no more than 1 1/4 miles apart,

within walking distance for most and otherwise well connected by public transportation, particularly in the high season the applicant seeks to operate within.

Fourthly, Ferries are prohibited from operating within New Harbor by the town's Zoning Ordinances and Comprehensive Plan, and it is well within the Town's jurisdiction to regulate "management and control of all vessels" by the enactment of Zoning Ordinances. Rhode Island General Laws 46.4-6.10 and in Type III waters as defined in the Regulations of the Coastal Resources Management Council.

Respectfully submitted,
THE TOWN OF NEW SHOREHAM
By Its Solicitors:
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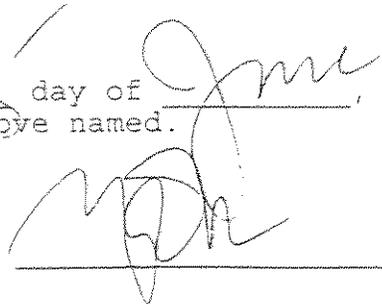
CERTIFICATION

TO: Paul Roberti, Esq.
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I hereby certify that on the 25 day of June, 1998 a copy of the above was mailed to the above named.



EXHIBIT

2

BEFORE THE
RHODE ISLAND DIVISION OF
PUBLIC UTILITIES AND CARRIERS
MOTOR CARRIERS DIVISION

IN RE: ISLAND HI-SPEED FERRY, LLC

DOCKET #98-MC-16

INTERSTATE NAVIGATION COMPANY'S
POST-HEARING BRIEF IN OPPOSITION TO THE
APPLICANT'S REQUEST FOR A WATER CARRIER
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Interstate Navigation Co.
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STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: ISLAND HI-SPEED FERRY, LLC.

DOCKET NO. 98-MC-16

**INTERSTATE NAVIGATION COMPANY'S POST-HEARING BRIEF IN OPPOSITION TO
THE APPLICANT'S REQUEST FOR A WATER CARRIER CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY**

I. SUMMARY OF INTERSTATE'S ARGUMENT

A. The Applicant Is Not Fit, Willing, Or Able -- The applicant has not proven that it is fit, willing, or able to provide the proposed service for the following reasons, among others:

1. Applicant is not "fit"

- Applicant is proposing an entity which has only \$10,000 of invested capital and \$2,200,000 of borrowed capital. Applicant believes that it should take only 0.5% of the risk and the ratepayers should take 99.5% of the risk. Further, no evidence was presented to show how the applicant would fund its operations should it suffer losses. Proposing a company that shifts 99.5% of the risk to the ratepayers shows a lack of fitness. Not having a plan to cover possible start-up losses also shows a lack of fitness.
- Applicant has no experience running a regulated utility or an offshore ferry.
- Applicant's proposed manager, Charles Donadio, Jr., has trouble finding the truth as follows:
 1. Mr. Donadio originally testified that his vessel would have "airline style seating", but on cross examination, he admitted that the Friendship IV did not have such seating.
 2. Mr. Donadio originally testified that his vessel would have carpeting, but on cross examination, he admitted that the Friendship IV did not have carpeting.
 3. Mr. Donadio testified that no permit was needed from either Block Island or the CRMC to run his proposed service. However, Block Island says that a notice of violation will be issued if the ferry tries to run into New Harbor, and the CRMC says an assent from the full Council is needed before the ferry can operate. The applicant has not applied for Town zoning relief, nor has it applied for the CRMC assent.
 4. Mr. Donadio testified that he had approval from DEM to operate the ferry from the same berth at the State Pier he currently uses for the Southland. Cross examination however, made it clear that he does not have a permit for the ferry and that there are certain conditions that have to be met which have still not been met.
 5. Mr. Donadio has proposed a rate of \$26 round trip adult. This was apparently calculated by dividing in half another company's rate that travels twice as far. The fact

- that Mr. Donadio didn't even try to determine what the PUC approved rate would be shows his cavalier approach. This is certainly a lack of fitness.
6. Mr. Donadio lost the truth again when he testified that his vessel will "depart earlier" than Interstate's vessel. In fact, under his own schedules, this is simply not true.
 7. Mr. Donadio admitted that he had no idea as to how many passengers would ride his ferry. His estimate of 50,000 was originally his "conservative" estimate, then it was his "best" estimate, and finally it became his "speculative" ridership. Mr. Donadio had to waiver on his answer because he did not perform due diligence or complete a survey or study to determine potential ridership. He could not even calculate that 50,000 round trip customers on his vessel was 38% capacity, not 19%. This is not the way a person who is "fit" to operate a regulated ferry company should do business.
 8. Mr. Donadio has proposed a ticket price of \$26 of which \$11 is pure profit. This totally unreasonable proposal shows a lack of fitness. To assume that the PUC would allow a 5,417% return on equity and a ticket price which includes 42% profit shows either a lack of effort or a lack of knowledge.
 9. Mr. Donadio snubs his nose at R.I. licensing laws by not getting a R.I. driver's license, even though he admits it is required by law. Someone who doesn't follow the law could also ignore safety considerations, the Division, the PUC, or the Coast Guard rules and regulations.
 10. Mr. Donadio's business plan shows pictures of the inside of a vessel. Until cross examination, everyone thought those pictures were of the Friendship IV. They are not pictures of the Friendship IV, but rather some other better built ship. Once again, Mr. Donadio tried to hide the truth and mislead the Division and his potential lenders.
 11. Mr. Donadio on cross examination stated that he had not calculated the total costs shown in his business plan, which included both principal payments and depreciation allowance. This is clear duplication. When confronted, he claimed that his accountant had done that calculation. But his accountant under oath testified that he did not do the calculation. Rather than admit to making an error, Mr. Donadio blamed someone else and misspoke the truth.
 12. Mr. Donadio misspoke again when he stated that he was "continually in contact with the owner of the Friendship IV", and yet claimed he didn't know that the boat was no longer available for the summer of 1998. However, it is possible that he was in contact with the owner and knew that it was no longer available, but tried to keep this information from the Hearing Officer.
 13. Mr. Donadio testified that the Friendship IV had a great ride, implying that he had actually ridden on the Friendship IV. On cross examination, we found that he had never ridden on the vessel. His attempt to mislead is a clear reflection on his lack of fitness.

14. Mr. Donadio testified that Mr. Bendokas of New England Airlines provided him with passenger information of 30,000 a year. Mr. Bendokas testified that he never spoke to Mr. Donadio and that he carried only about 12,000 per year. Once again someone is lying. If it is Mr. Donadio, his fitness is questionable.
15. Mr. Donadio lied under oath when he claimed, both in the data request signed by his lawyers, and in his testimony, that he had never been arrested or charged with a crime, when in fact he had been arrested and charged with a crime of domestic violence in 1996.
16. Mr. Donadio lied under oath when he stated that he had a vessel loan commitment from BankRI and that a commitment letter was being drafted.

2. Applicant is not "willing"

- The applicant admitted that it was not willing to operate if it had to operate under PUC regulations such as a rate of return limited to 11-12%, or if the PUC set the ticket price lower than he wanted. Of course, the Supreme Court has ruled that PUC regulations apply to all passenger ferries. Therefore, applicant is not "willing".

3. Applicant is not "able"

- The applicant has no vessel;
- The applicant has no backup vessel in the event of a breakdown, accident, or other contingency;
- The applicant has failed to even apply for the primary loan of approximately \$2 million that the applicant admits will be needed to purchase a vessel;
- The applicant does not have a purchase and sale agreement for a vessel, nor has it made any deposits on a vessel;
- The applicant does not have an approved berthing permit for its proposed docking location in Galilee;
- The zoning laws on Block Island will not allow the applicant to dock its vessel at its proposed location in New Harbor.
- The applicant has not even applied for the necessary CRMC assent for Payne's dock.
- The company has no crews, dock hands, or ticket sellers;
- The company has not yet purchased a computer, other hardware, or the software necessary to provide the advanced reservations and pre-sale of tickets suggested in its filing.

B. The Applicant Has Not Proven "Public Necessity"-- The applicant has not proven that the "public necessity requires" this passenger only service, and has not proven that Interstate is not providing adequate service to meet passenger demands, as shown below:

"we wanted to look and see what was out there in the market of high speed ferries in case that we would have to get drawn into this, say, if a license was awarded to somebody else, then we might have to compete with them possibly with a high speed boat.

* * *

just to keep our options open to see what was out there on the market of high speed boats, or if the Division did think there was a need for the service, which we don't think there is a need for this service, that we would hope that we would have possibly the first crack at running a high speed boat out to the island" (an 185-86, 188).

5. Criminal Complaint. Interstate's rebuttal case consisted of a criminal complaint against Mr. Donadio in which he was charged with a crime of domestic violence in 1996. This document was admitted into evidence on June 11, 1998. This document impeaches the credibility of Mr. Donadio and goes to the question of his fitness to operate a public utility.

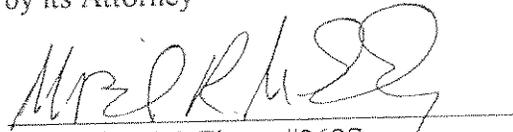
K. JUNE 11, 1998

1. Charles A. Donadio, Jr. tried to explain away his arrest record by claiming that he did not realize he was under arrest or charged with a crime. However, in the application to the Division which asked if any member of the applicant had been charged with a traffic offense, the answer (signed under oath by Mr. Donadio) was "yes", and the explanation was that Mr. Jon Hagopian had been charged with speeding, but the charge was dismissed. If the applicant had any intention of being truthful about this, the partners would have simply answered both the data request and the question during cross examination "yes, Mr. Donadio was charged with a crime of domestic violence, but it was dismissed".

IV. CONCLUSION

Accordingly, for the foregoing reasons, we request that the application for a certificate of public convenience and necessity be denied.

Respectfully submitted,
Interstate Navigation Co.
d/b/a Block Island Ferry
by its Attorney



Michael R. McElroy, #2627

SCHACHT & McELROY

21 Dryden Lane

P.O. Box 6721

Providence, RI 02940-6721

(401) 351-4100

(401) 421-5696 fax

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of June, 1998, I mailed a true copy of the foregoing by first class mail to the following:

Hagopian & Hagopian
137 Chestnut Street
Providence, RI 02903

Packer & O'Keefe
1220 Kingstown Road
Peace Dale, RI 02883-2428

Paul Roberti, Esq.
Attorney General's Office
150 South Main Street
Providence, RI 02903



Theresa M. Weeden

STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC.:

Docket No.: D-13-51

AFFIDAVIT
OF CHARLES A. DONADIO, JR.

1. Charles A. Donadio, Jr., being sworn upon oath, depose and say:

1. That I am President of Rhode Island Fast Ferry, Inc. and as such I have personal knowledge of the facts set forth in this Affidavit;

2. That attached hereto as Exhibit "A" are historical documents obtained from the Library of Congress regarding the conveyance of the South Pier in Old Harbor, Block Island to the Town of New Shoreham and complaints made to the U.S. Army Corps of Engineers from approximately 1894 to 1904 regarding the Town's use of that pier;

3. That attached hereto as Exhibit "B" are historical documents, including photos, showing the use of the South Pier in Old Harbor, Block Island by privately owned ferries, including the MV *Sprig Carroll*, MV *Westport* and the MV *Block Island* (later renamed the *Yankee*), all of which were evidently owned by Interstate Navigation;

4. That Galilee Cruises, Inc., a company I was the President and sole shareholder of, was the managing Member of Island Hi-Speed Ferry, LLC ("IHSF") from its founding in 1998 until 2003 when it sold its interest in IHSF;

5. That when IHSF made application to the DPUC for its Certificate of Public Convenience and Necessity ("CPCN") it had only a simple Letter of Intent from Payne's Dock

Incorporated ("Payne's) expressing Payne's intent to lease wharfage to IHSF, conditioned upon the granting of IHSF's CPCN;

6. That IHSF did not have a formal lease agreement with Payne's and had made no application to the Coastal Resources Management Council, or any other government board or agency for that matter, for permission to use the pier, as it was considered unnecessary;

7. That based upon my relationship with the owner of Payne's Dock, and plans for on-going discussions regarding the use of the Payne's dock, I believe I will be able to secure permission, at the appropriate time, for use of Payne's Dock in New Harbor for my Quonset-Block Island route, in the event that becomes necessary.



Charles A. Donadio, Jr.
President
Rhode Island Fast Ferry, Inc.

Subscribed and sworn to in Providence, Rhode Island, on the 31st day of July, 2015.



Notary Public

my commission expires on Oct. 8, 2017

EXHIBIT

A

July 14, 2015

Via E-mail/Hand-Delivery

Ms. Luly Massaro
Division Clerk
Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, Rhode Island 02888

In re: Rhode Island Fast Ferry, Inc. – Docket No. D-13-51

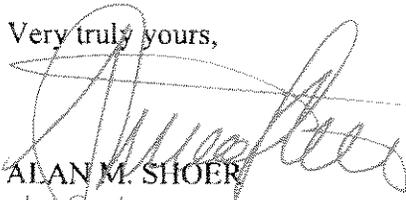
Dear Luly:

On behalf of Rhode Island Fast Ferry, Inc. ("RIFF"), please find an original and four (4) copies enclosed for filing in the above docket:

- 1.) RIFF's Supplemental Response to the Town of New Shoreham's Additional Data Request at the Deposition of Charles A. Donadio, Jr.

Please let me know if you have any questions.

Very truly yours,


ALAN M. SHOER
ashoer@apslaw.com

Enclosure

STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES AND CARRIERS

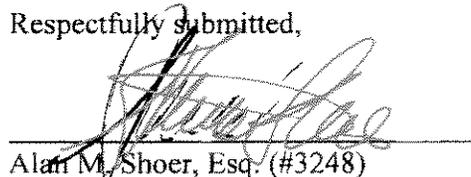
IN RE: RHODE ISLAND FAST FERRY, INC.:

Docket No.: D-13-51

RHODE ISLAND FAST FERRY, INC. SUPPLEMENTAL RESPONSE TO
THE TOWN OF NEW SHOREHAM'S ADDITIONAL DATA REQUEST AT THE
DEPOSITION OF CHARLES A. DONADIO, JR

At the deposition of Charles A. Donadio, Jr. the Town of New Shoreham, through its attorney, requested that RIFF produce the document relied upon by Mr. Donadio in his Answer to Question numbered 8 in his Rebuttal Testimony. The documents Mr. Donadio relied upon are attached hereto as Exhibit "A".

Respectfully submitted,


Alan M. Shoer, Esq. (#3248)
James A. Hall, Esq. (#6167)
ADLER POLLOCK & SHEEHAN, P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345
Tel: 401-274-7200
Fax: 401-751-0604

Dated: July 14, 2015

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2015, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

A

1

the Great Salt Pond

It is ordered by the Town Council of
the town of New Shoreham as follows

c 1

Whom shall take any shell fish except mussels
from the water of the Great Salt Pond or from the shore
of the said Great Salt Pond at any time from the passage
of the ordinance to December first 1879 shall be held
liable to pay and all costs of prosecution for each and
every offence the fine to amount one half to the use of the
corporation and the other half to and for the use of
the town.

c 11

This ordinance shall take effect immediately

2. New Shoreham Oct 22^d 1879.

John E. Safford	\$17.35
John E. Safford	40.95
John E. Safford	49.70

Resolved and Moved, that your Senator and Representatives
be requested to use their influence in securing
for the town of New Shoreham the South Fork
of the River

Resolved that Mary Anna Row is and is hereby
appointed in and authorized for the next clerk in
making the record books.

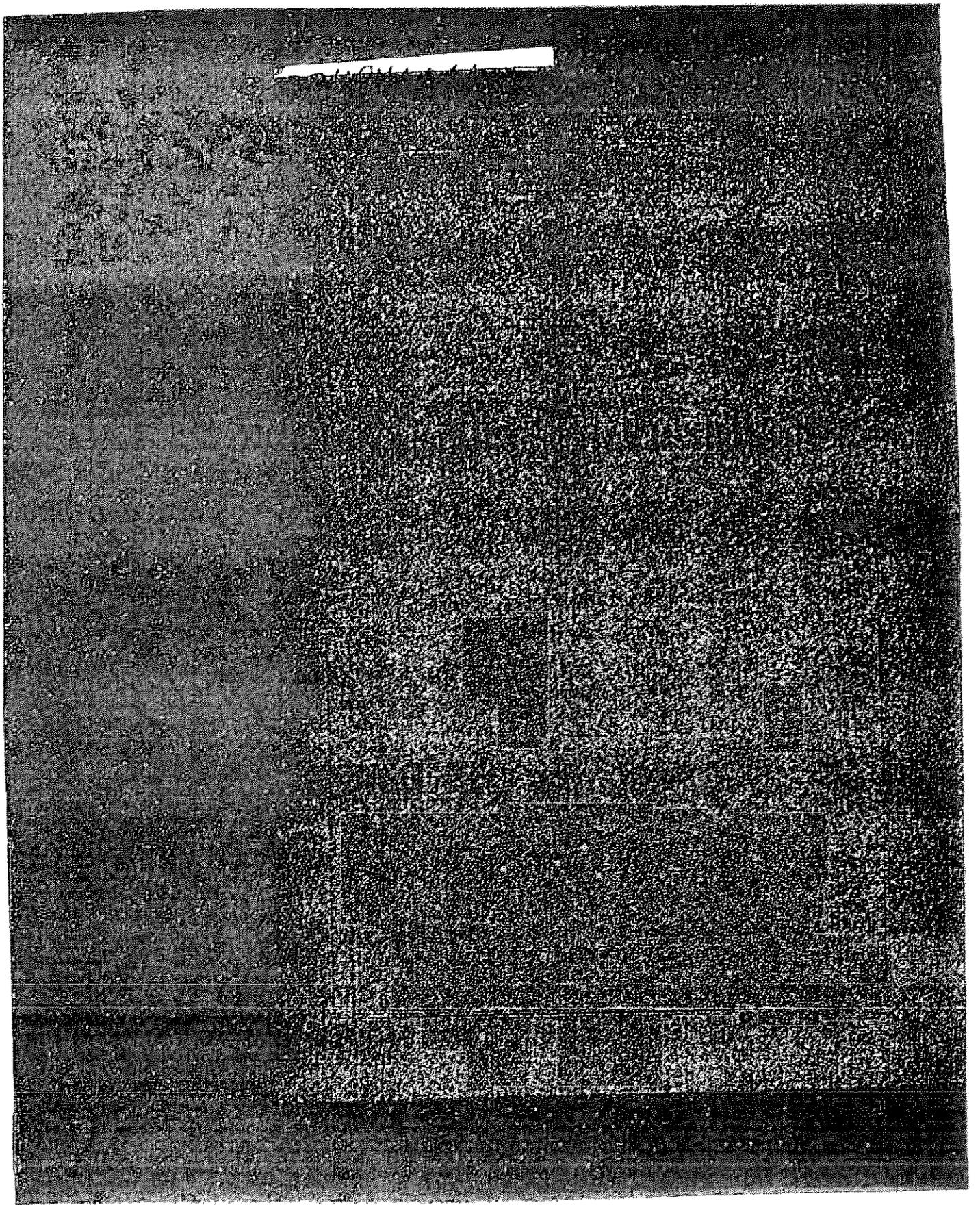
Resolved, George Vetter is and is hereby appointed
a committee to examine the town records and
to get council if necessary to find out what right
the town of New Shoreham holds under the deed given
to Henry Safford to the town of New Shoreham
Galed April 27th 1790

All unfinished business referred
to Amos A. Row
Council Clerk

2

- Sandy Bay, Mass. Improving national harbor of refuge at Sandy Bay, Cape Ann, Massachusetts: Continuing improvement, one hundred and fifty thousand dollars.
- Manchester, Mass. Improving harbor at Manchester, Massachusetts: Continuing improvement, five thousand dollars.
- Martha's Vineyard, Mass. Improving Martha's Vineyard inner harbor at Edgartown, Massachusetts, for dredging, two thousand dollars.
- Salem, Mass. Improving Salem Harbor, including South River, Massachusetts, fourteen thousand dollars.
- Stage, Mass. Improving Stage Harbor at Chatham, Massachusetts, five thousand dollars.
- Westport, Mass. Improving Westport Harbor and East and West Branch of Westport River, Massachusetts, one thousand dollars, to be applied in extending the jetty on Horse Neck Point and to dredging in Westport Harbor.
- Block Island, R. I. Improving harbor at Block Island, Rhode Island: Continuing improvement, fifteen thousand dollars; and the wharf on the land side of the inner harbor is hereby conveyed to the town of New Shoreham for the public use of said town; but no tolls or charges shall ever be exacted for the use of said wharf by public vessels of the United States or freight carried in such vessels.
- Conveyance to New Shoreham of wharf. Wharf tolls, etc.
- Newport, R. I. Improving harbor at Newport, Rhode Island: Continuing improvement, twelve thousand five hundred dollars.
- Greenwich Bay, R. I. Improving harbor at Greenwich Bay, Rhode Island: To complete, two thousand dollars.
- Coaster's Harbor Island, R. I. Improving cove near southeast extremity of Coaster's Harbor Island, Rhode Island, and water-way between said island and Rhode Island, to complete, five thousand five hundred dollars.
- Point Judith, R. I. Constructing national harbor of refuge at or near Point Judith, Rhode Island: Commencing construction, seventy-five thousand dollars.
- Bridgeport, Conn. Improving harbor at Bridgeport, Connecticut: Continuing improvement, twenty thousand dollars, of which fifteen thousand dollars shall be expended in constructing breakwater between the Tongue and inner beacon, and five thousand dollars to complete improvement above the bridge.
- Black Rock, Conn. Improving harbor at Black Rock, Connecticut: Continuing improvement, five thousand dollars.
- New Haven, Conn. Constructing breakwaters at New Haven, Connecticut, in accordance with the plans submitted by Chief of Engineers in report for eighteen hundred and eighty-nine, page six hundred and seventy-eight: Continuing improvement, one hundred and twenty thousand dollars.
- New Haven, Conn. Improving harbor at New Haven, Connecticut: Continuing improvement, fifteen thousand dollars.
- Norwalk, Conn. Improving harbor at Norwalk, Connecticut: Completing improvement, four thousand dollars.
- Wilson's Point, Conn. Improving harbor at Wilson's Point, Connecticut: For widening and deepening channel, thirty thousand dollars.
- Stonington, Conn. Improving harbor at Stonington, Connecticut: Continuing improvement, twelve thousand five hundred dollars.
- Stamford, Conn. Improving harbor at Stamford, Connecticut: Completing improvement, five thousand dollars.
- Five Mile River, Conn. Improving harbor at Five Mile River, Connecticut: Continuing improvement, five thousand dollars.
- Milford, Conn. Improving harbor at Milford, Connecticut: Completing improvement, two thousand five hundred dollars.
- Duck Island, Conn. Improving harbor of refuge, Duck Island Harbor, on Long Island Sound, Connecticut: twenty-five thousand dollars.
- Clinton, Conn. Improving harbor at Clinton, Connecticut: Continuing improvement, three thousand five hundred dollars.

3



HARBOR OF REFUGE AT BLOCK ISLAND, RHODE ISLAND.

This island is a part of the State of Rhode Island; it is 14 miles east of Conanicut Point, the eastern end of Long Island, and its nearest point is about 10 miles from the mainland. Besides the wants of the mackerel-fishing fleet and the general coast navigation the island is an important point on our shores for ocean navigation. It has a signal station connected by submarine telegraph with the mainland. Vessels are passing the island at all times and on all sides of it, and its position renders it of national importance. The object of the improvement is to furnish a harbor of refuge for vessels engaged in foreign and coastwise commerce. The mean rise and fall of the tide is about 8 feet.

ORIGINAL CONDITION.

Before the construction of the present harbor of refuge Block Island had no harbor which afforded protection for decked vessels. The only craft used were open boats, which, on the approach of storms, were beached up on the beach by oars. The largest of these boats were of about 10 tons burden.

PLANS OF THE WORK.

The original project and its subsequent modifications provided for a harbor of refuge on the eastern side of the island, consisting of an inner harbor or basin for small vessels and an exterior harbor for large ones. The basin was to be about 350 by 300 feet in area, and inclosed, with the exception of an opening 80 feet in width. The exterior harbor was to be formed by a riprap breakwater, which has been built. About 300 feet from the sea end of this breakwater, which is 1,000 feet long, a gap 200 feet long was left for the convenience of vessels. The present project contemplates the enlargement of the inner harbor. A plan of Block Island, showing the position of the harbor of refuge and a plan of the works, may be found in the Report of the Chief of Engineers for 1882, vol. 1, pages 612, 613.

AMOUNT EXPENDED AND RESULTS TO JUNE 30, 1890.

The total expenditure up to June 30, 1890, including liabilities outstanding at that date, was \$284,123.59.

The inner harbor and the main breakwater, built in prolongation of the eastern side of the inner harbor, and extending 1,000 feet from the shore, were constructed in the years 1870 to 1879, inclusive. The utility of the work at once became apparent. In stormy weather the inner harbor especially was filled with shalldraws and coasters, and it soon became necessary to increase its depth from 7 feet, to which it had been dredged in the first instance, to 9 feet at mean

low water. A strong jetty had been built out from the cliff to the eastward of the inner harbor and a masonry wall constructed on the inside of the crib work forming the eastern side of the inner harbor. The filling of the gap in the main breakwater had been completed. The timber jetty filled with stone, forming the shore end of the western wall of the enlarged inner harbor, and about 160 feet of its north wall east of the opening into the harbor had been finished, and about 140 feet of the wall west of the opening built to the level of mean high water. The shore west of the breakwater had been dredged to 9 feet at mean low water from the steamboat wharf to within 100 feet of the north wall.

OPERATIONS DURING THE LAST FISCAL YEAR.

At the beginning of the last fiscal year no work was in progress. By act of September 19, 1890, Congress appropriated \$15,000 for the continuation of this work, and a project for the expenditure of this sum was prepared and was approved by the Chief of Engineers. The project contemplates continuing the construction of the riprap walls of the enlarged inner harbor.

Advertisements for proposals for riprap granite were issued December 5, 1890, and proposals opened January 6, 1891. But one bid was received, and this was rejected.

An abstract of the proposals received will be found in the appended table.

Work was resumed on the north wall of the enlarged inner harbor and 8,711 tons of riprap granite were placed in it. The result was the extension of the north wall of the enlarged inner harbor to the westward, the foundation reaching to within 60 feet of the end. The stone delivered was taken from Mason Island Quarry, which is operated by the Government.

Mr. F. L. Angell was the local superintendent of the work.

WHARF AT BLOCK ISLAND.

By act of September 19, 1890, the wharf on the land side of the inner harbor was conveyed to the town of New Shoreham "for the public use of said town; but no tolls or charges shall ever be exacted for the use of said wharf by public vessels of the United States or freight carried in such vessels."

WORK REQUIRED TO COMPLETE THE EXISTING PROJECT.

The work required to complete the existing project is the completion of the filling of the gap in the main breakwater, the restoration of the breakwater to its original dimensions, and the enlargement of the inner harbor.

4

3rd Indorsement.
U. S. Engr. Office, Newport, R. I. Jan. 19, 1894.

Respectfully returned to the Chief of Engineers, U.S. Army, with remarks as follows:-

After some special investigation, I am of the opinion that the claims of the petitioners are somewhat exaggerated and that the use of the basin as claimed by them is neither as extensive nor as detrimental to them as claimed by them.

The basin to which they undoubtedly refer, is a small basin about 270 feet square and from 6 to 9 feet deep, originally built (about 20 years ago) by the United States as a place in which to lay up its own plant during the construction of the large breakwater at this place (For map of harbor, see page 844, Ann. Report Chief of Engineers for 1893). After the completion of the breakwater, and by Act of 19 September 1890, the wharf on the land side of this basin was conveyed to the town of New Shoreham (Block Island) for the public use of said town; no tolls or charges to ever be exacted however for the use of said wharf by public vessels of the United States. Owing to the small size of the basin, this conveyance practically gives to the town of New Shoreham the control of the use of the basin; no boats, except those of the United States having any rights at all to the use of the other three sides of the basin.

There has been in the past almost every year a few complaints by a few persons (not always the same) that they have been kept by others from using this basin or its surrounding wharves as they would have liked to use it. Such complaints may be expected to continue yearly until the town of New Shoreham (as do other seaport towns and cities of this State) shall appoint a harbor master to look after and control the use of its harbor by public and private boats. The completion, during the past season, of the enlarged harbor (about 700 feet wide and 1000 feet long) makes more important than ever the need of such a harbor master.

I have therefore to recommend that this and all future complaints of the people of this neighborhood as to the improper use of its harbor by public and private vessels, be met by a recommendation to the complainants to lay the matter before their local authorities with a view of securing for their harbor the appointment of a local harbor master under local State laws.

Respectfully submitted,

WHE-CIC.

W. H. C. C.
Captain, Corps of Engineers, U.S.A.

*Copy also filed with
"Pier & Wharf"*

5

Report on wharfage conditions at Block Island, R.I.

U. S. Engineer Office,

Providence, R.I., June 27, 1904.

Brig. Gen. Alexander Mackenzie,
Chief of Engineers, U. S. Army,
Washington, D. C.

General:

1. In compliance with indorsement dated June 24, 1904, on E.D. File No. 51746, I have the honor to submit the following report:
2. The river and harbor act of September 19, 1890, contained the following: "Improving harbor at Block Island: Continuing improvement, fifteen thousand dollars; and the wharf on the land side of the inner harbor is hereby conveyed to the town of New Shoreham for the public use of said town; but no tolls or charges shall ever be exacted for the use of said wharf by public vessels of the United States or freight carried in such vessels."
3. On the inclosed blue print is shown the wharf in question and it is at this wharf that the steamer "City of Haverhill" is prevented from landing by the fact that the steamer "George W. Danielson" is laid there by the owners, although she is not now in commission.
4. The town of New Shoreham, the corporate name of the town on Block Island, is the owner of the two steamers, the "George W. Danielson" and the "New Shoreham". The New Shoreham cannot use the old harbor owing to there not being sufficient depth in the inner basin, so she uses the wharf in the Great Salt Pond. At this season of the year, great quantities of fish are shipped from Block

Island and as the greater part of the fishing fleet use the old harbor and the packing is done at this locality, it is the better point for shipment. I am informed that shipments made from the wharf at the Great Salt Pond cost the dealers 25 cents per barrel for cartage. It was in order to save this expense that the petitioners secured the running of the steamer "City of Navesink" between Block Island, Providence and Newport, R.I.

5. As the harbor at Block Island was constructed by the United States and the wharf was ceded to the town of New Shoreham for the public use of said town, it would seem as though the holding of the steamer "George W. Dantison" at the public wharf, thereby preventing other boats from using it, makes the said "George W. Dantison" an obstruction to navigation, under section 15 of the river and harbor act of March 3, 1899. If section 4 of the river and harbor act of August 16, 1894, is applicable in this case, I would respectfully recommend that the following regulations be issued by authority of the Secretary of War:

Regulations regarding obstruction of navigation in the harbor at Block Island, R. I.

The river and harbor act of August 16, 1894, provides as follows: "Sec. 4- That it shall be the duty of the Secretary of War to prescribe such rules and regulations for the use, administration, and navigation of any or all canals and similar works of navigation that now are, or that hereafter may be, owned, operated, or maintained by the United States as in his judgment the public necessity may require.

Such rules and regulations shall be posted, in conspicuous and appropriate places, for the information of the public; and every person and every corporation which knowingly and wilfully violate such rules and regulations shall be deemed guilty of a misdemeanor and, on conviction thereof in any district court in

the United States within whose territorial jurisdiction such offenses may have been committed, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court.

In accordance with the above, notice is hereby given to owners, captains or others in charge of steamers, sailing vessels or other floating craft using the harbors at Block Island, R.I., that they must not in any way, either by anchoring or tying their vessels to the wharves or piers, obstruct the capacity of the harbors or prevent other vessels from proceeding to the docks: Provided, however, that a reasonable time shall be allowed vessels for the discharging and receipt of passengers and freight.

Very respectfully,

Your obedient servant,

Lieut. Col., Corps of Engineers.

6

5th

OFFICE OF THE SECRETARY OF WAR
WASHINGTON

July 5, 1904.

1. Respectfully returned to the Secretary of War.
2. The river and harbor act of September 19, 1890, in the item making appropriation for improving harbor at Block Island, R.I., contains the following provision:

"and the wharf on the land side of the inner harbor is hereby conveyed to the town of New Shoreham for the public use of said town; but no tolls or charges shall ever be exacted for the use of said wharf by public vessels of the United States or freight carried in such vessels."

Since this enactment the said wharf has been in the possession of the town of New Shoreham, and parties engaged in navigation now make complaint that they are prevented from having the free use of the wharf by reason of the fact that a steamer belonging to the town is continuously anchored there; it being alleged that it is the object of the town authorities in anchoring their steamer at the wharf to prevent competition from boats belonging to private parties. Request is made that the town authorities be required to remove the boat from the wharf, so that it may be used freely by the public.
3. The matter has been investigated by Lieutenant Colonel Willard, to whose report of the 27th ultimo attention is respectfully invited.

5. As Congress conveyed this wharf to the town directly, it does not appear that the War Department has any power to interfere with the management and control of the structure, and I therefore see no way in which the Department could afford the petitioners the relief desired. As this is a legal question, however, I recommend that, before final action is taken, the papers be referred to the Judge Advocate General for opinion whether under existing laws, the War Department can remedy the evil complained of.

R. J. Cook, Chief of War Department

51746
Inclos. 1-3 accomp'g.

Handwritten initials and scribbles

Handwritten mark

7

(18327) ^{7th} Indorsement. C.

July 13, 1904.

Respectfully returned to the Secretary of War.

The facts of this case are stated by the Chief of Engineers in 5th indorsement hereon as follows:

"The river and harbor act of September 19, 1890, in the item making appropriation for improving harbor at Block Island, R.I., contains the following provision: 'and the wharf on the land side of the inner harbor is hereby conveyed to the town of New Shoreham for the public use of said town; but no tolls or charges shall ever be exacted for the use of said wharf by public vessels of the United States or freight carried in such vessels.'

"Since this enactment the said wharf has been in the possession of the town of New Shoreham, and parties engaged in navigation now make complaint that they are prevented from having the free use of the wharf by reason of the fact that a

2.

steamer belonging to the town is continuously anchored there; it being alleged that it is the object of the town authorities in anchoring their steamer at the wharf to prevent competition from boats belonging to private parties. Request is made that the town authorities be required to remove the boat from the wharf, so that it may be used freely by the public."

After referring to the accompanying report in the matter by Lieutenant-Colonel Willard, the Chief of Engineers says:

"As Congress conveyed this wharf to the town directly, it does not appear that the War Department has any power to interfere with the management and control of the structure, and I therefore see no way in which the Department could afford the petitioners the relief desired."

I concur in these views of the Chief of Engineers. It is not clear, however, that the petitioners are without relief in the premises. By section 10 of the River and Harbor Act of March 3, 1899

the
The
8

MASS. ARCHIVES
1904
Office of Inspection

3.

(20 Stats., 1101), the -

"creation of any obstruction not affirmatively authorized by Congress to the navigable capacity of any of the waters of the United States is *** prohibited;" and in section 15 of the same Act it is made unlawful to -

"tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft."

While the wharf was granted to the town, it was expressly stipulated that it was "for the public use of said town;" and it is not believed that it would be lawful for the town to obstruct the use of it by the public in the manner specified. However, as stated above, the Secretary of War is without authority to give the petitioners the relief desired. If the action complained of be a violation of the statutes referred to, it is incumbent on the Department of Justice to conduct the legal proceedings necessary to enforce the statutes. The only jurisdiction the Secretary of War would have in the premises would be to make a request for the prosecution

4.

of the offenders; and such action might be taken by the Department of Justice without such request.

It is, therefore, suggested that these papers be referred to the Attorney-General with request that, if in his opinion the acts complained of violate the provisions of the River and Harbor Act of March 3, 1899, he will cause the U. S. Attorney to prosecute the offenders.

O. J. ...
Judge-Advocate General.

JUL 15 1906

if - ...

EXHIBIT

B

1880 stereoview —

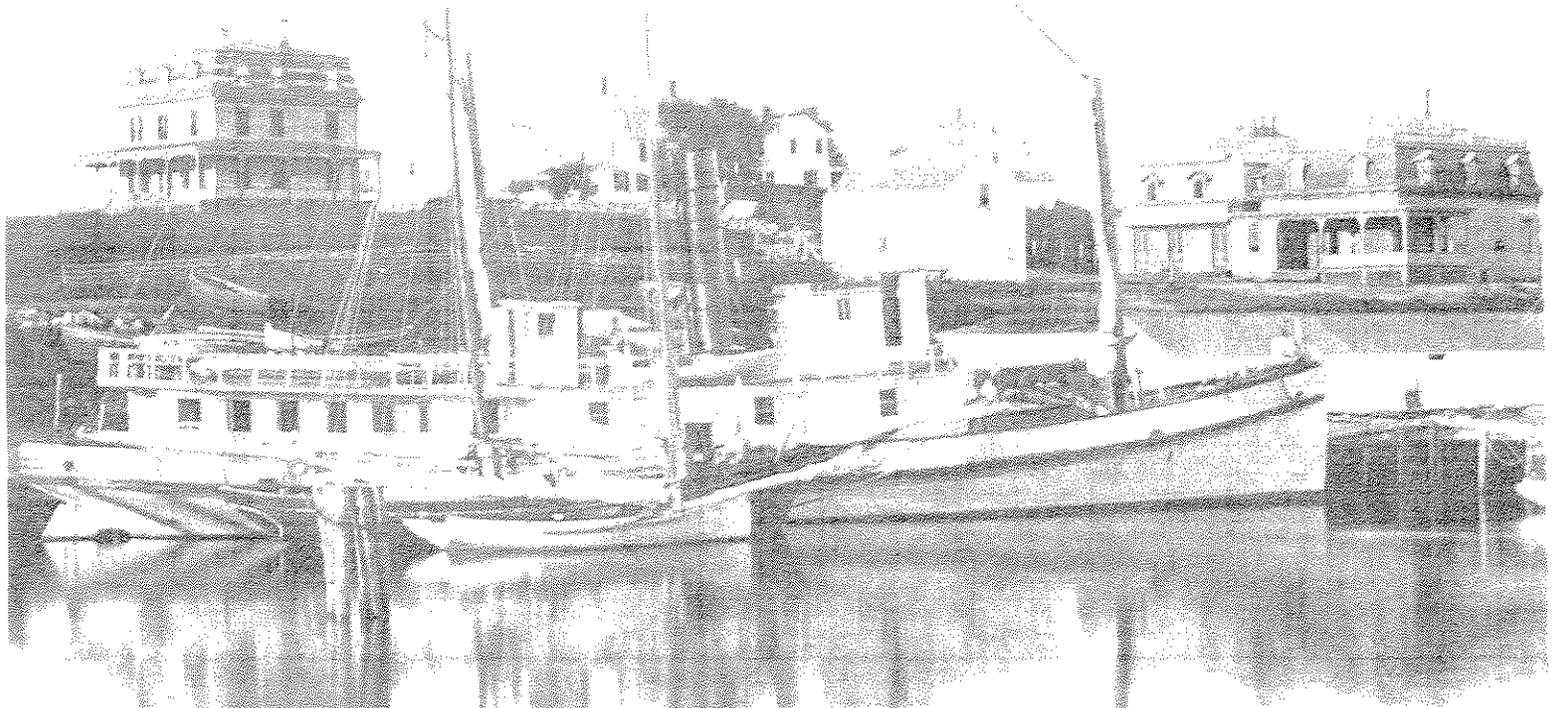
“Steamer

“**GEORGE W. DANIELSON”**

It is well when a two-masted steamer, a trim black schooner, and a white catboat nestle together in the calm of a Block Island summer.

The 106-foot long **GEORGE W. DANIELSON** was launched on the mainland in 1880 for a group of Block Islanders, and served as the year-round ferry until 1914, most often captained by George W. Conley (1838-1917).

In the enlargement below, the tower of the Manisses Hotel on Spring Street can easily be seen poking up.



The SPRIGG CARROLL arrives at Old Harbor from Point Judith — 1951

Words hardly need be added — just go back in time, when passengers hovered a few feet from — and in front of — the captain. When you could sit on the tailgate of your pickup truck seeing the boat come within a few feet of you. The doors of your woodie station wagon left open — always room to park.

Back to when hulls of arriving boats swung like a swan's body, coming gracefully broadside to the waiting crowds — no backing up like the modern imitation ferries running 15 trips a day endlessly back and forth now, offering little more magic than a fleet of buses.

It was instead in the past like a grand entrance coming up from the horizon, a special event just twice a day at noon and 7 pm, onto a stage where audience and cast would mingle in one great production called "life" — climbing into artful automobiles worth keeping forever, heading off into the sparse fields of summer wedged round with sea whose sight could hardly be avoided no matter what lane on the island you weaved your way down. A real island, quiet, where ocean and land meshed like fingers of two hands clasped together around one's soul. Take me there.



Sights at Old Harbor dock — 1930s —

Girl on a piling, Old Harbor dock — 1930s

A young Priscilla Hempstead soaked up unfolding scenes at Old Harbor's always interesting docks — gazing patiently into a setting sun for the photographer. She liked island summers enough to stay put for decades.

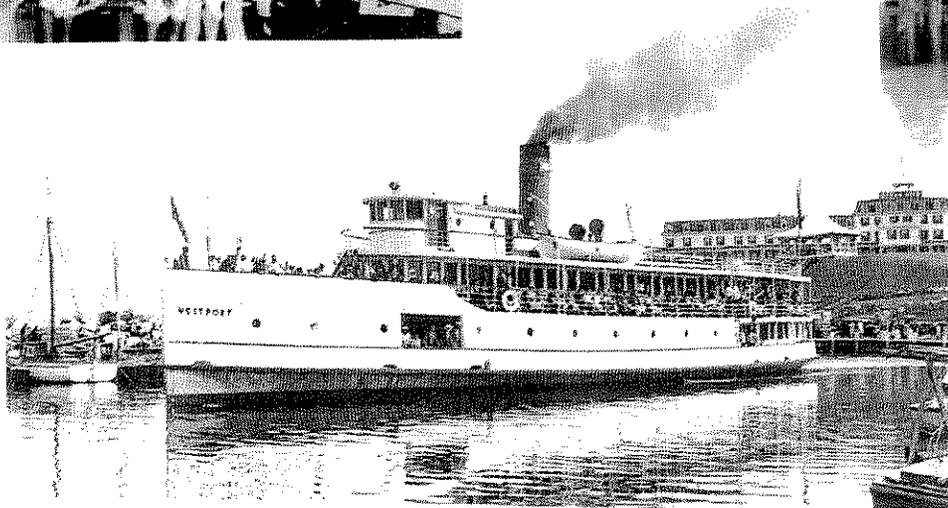
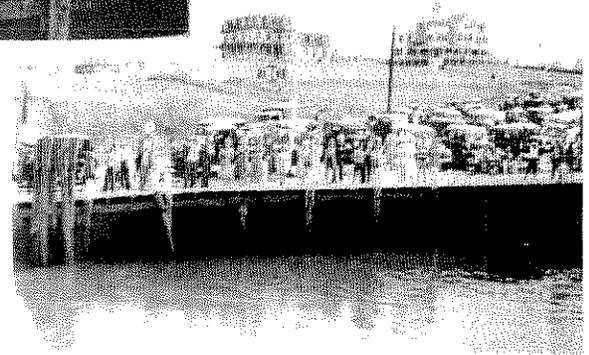
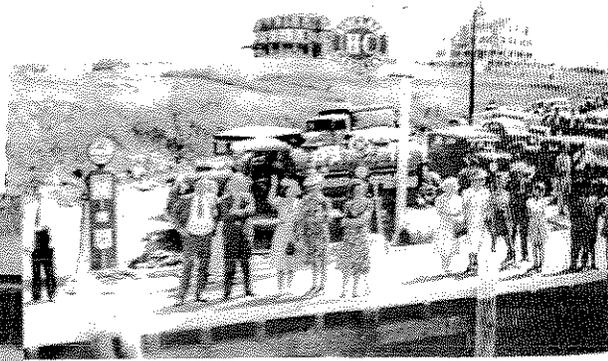
In the background is Ballard's Inn.

Out of sight to the right, up on the hill dominating this scene, was the Ocean View Hotel, which her husband Henry Hempstead would photograph burning in 1966, see page 235.

Their daughter, Melissa Schottland, carries on the same — sitting patiently as well, but with island conservation groups.

Waving goodbye from the ferry, and the dock — 1934

Few who experience the sudden pangs of their departure can resist making a series of photographs chronicling that journey.



WESTPORT leaves for Providence — 1939

The WESTPORT was built in 1911 for use amongst Maine's numerous offshore islands. With a beefed-up hull featuring smaller portholes, she was used by Interstate Navigation Co. from 1939 to 1941 when she became one of many ferries taken into government service in preparation for the impending war.

At left, the PEMAQUID and CAMBRIDGE of the Sound Steamship Lines are tied up near their competitors from the Interstate Navigation Company, at right, WESTPORT and BLOCK ISLAND. All four ships were

soon taken by the military for the impending war, and nearly all ferry service to the island borne by the tiny ELIZABETH ANN, see page 105. Of these four, PEMAQUID and BLOCK ISLAND returned after the war.

BLOCK ISLAND
(later renamed YANKEE)
— at Old Harbor, 1940

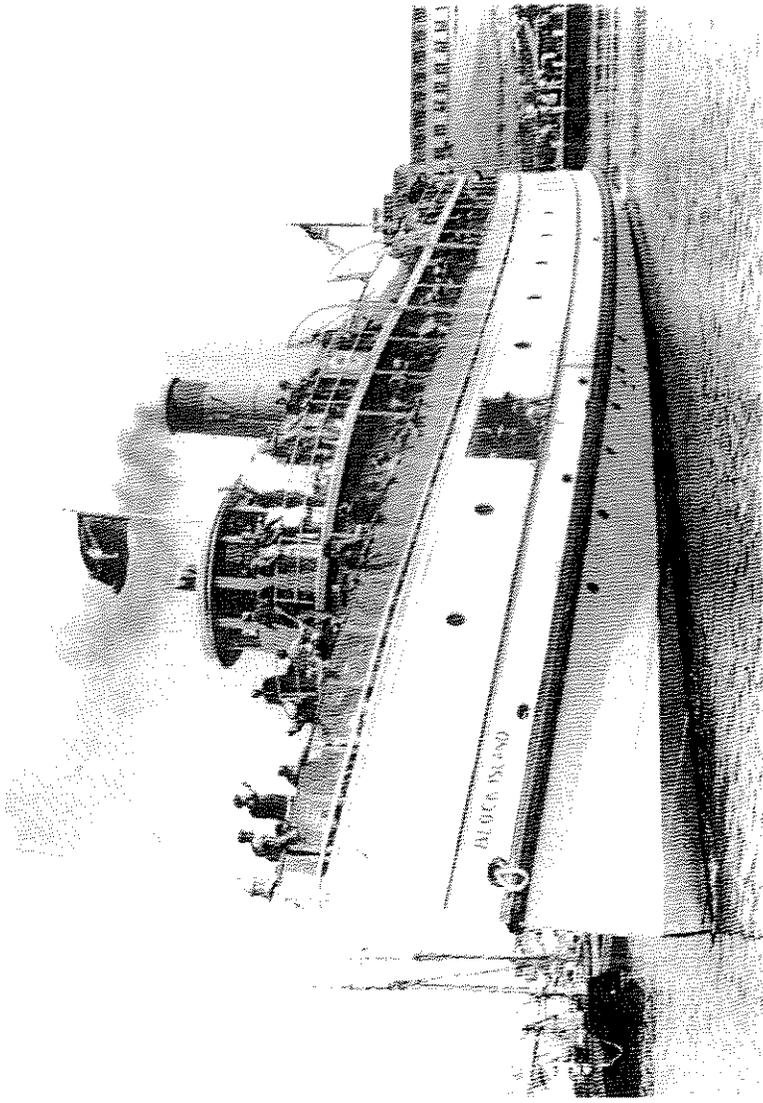
After running one summer to the island, Interstate Navigation Company's ferry **BLOCK ISLAND** began Navy service in February 1941, ten months before the United States entered World War II.

After the war — beginning with the 1948 summer — she was named **YANKEE**, and continued to the island until 1983.

She was built as the **MACHIGONNE** in 1907, and in the 1920s took immigrants from Ellis Island to Manhattan.

The **YANKEE** is privately preserved today as a floating museum in New York City.

See pages 105-107 for many of these same ferries in the 1930s.



Interstate Navigation Company 1928-2008+

IN 1928 THE INTERSTATE NAVIGATION COMPANY WAS CREATED BY Raymond Abell and Louis Round, captains in their twenties who built the company's success around the 104-foot **ELIZABETH ANN**, an ex-submarine chaser built during World War I, some say with one U-boat kill to her credit.

During her first few years as a ferry, runs were made year-round from Stonington, Connecticut, to Block Island. At 20 miles, this route was shorter than the usual 31-mile trip from New London, or the 25 miles from Newport, that earlier ferry companies had always traveled. In those years Point Judith, only 12 miles away, was unsuitable for use.

Nicknamed "**LIZZIE ANN**," the sea-worthy, narrow beamed boat — only 14-feet wide — was a great favorite, until burning at a New London dock in 1951 while being repaired.

Winning the all-important mail contract to the island in 1933, Interstate ended the life of the previous mail carrier, the Rhode Island Marine Transportation Company. That year Interstate purchased the 110-foot **NELSECO II**, which had first begun trips to Block Island in 1921 for the old Norwich, New London and Block Island Line. With three decks and a pleasing appearance, the **NELSECO II** continued in service until the early 1960's, spawning the subordinate Nelseco Navigation Company under which name Interstate's New London-based boats still operate.

Another notable coup for Interstate was to use the **ELIZABETH ANN** for the first ferry service from nearby Point Judith, advertising these trips in 1936 as the "Short Route." The State of Rhode Island built the Point Judith pier for the specific purpose of having Block Island ferries use it.

This was part of President Roosevelt's public works program to bring the country out of the Depression, a 35-acre anchorage was dredged in 1934 and 1935, and a 200-foot by 50-foot state pier created — the same large pier that has served island ferries ever since.

Curiously in the 1990s the Town of Narragansett began saying that Block Island should not use the pier, even though Narragansett had nothing to do with the dock's



MONHEGAN — 1930s at Providence dock

Interstate Navigation Company's ferry **MONHEGAN** was one of the many venerable Maine boats that found new life at Block Island — see list bottom of page 153.

The **MONHEGAN**, built in 1903, plowed through icy seas for many years to her namesake, the island of Monhegan.

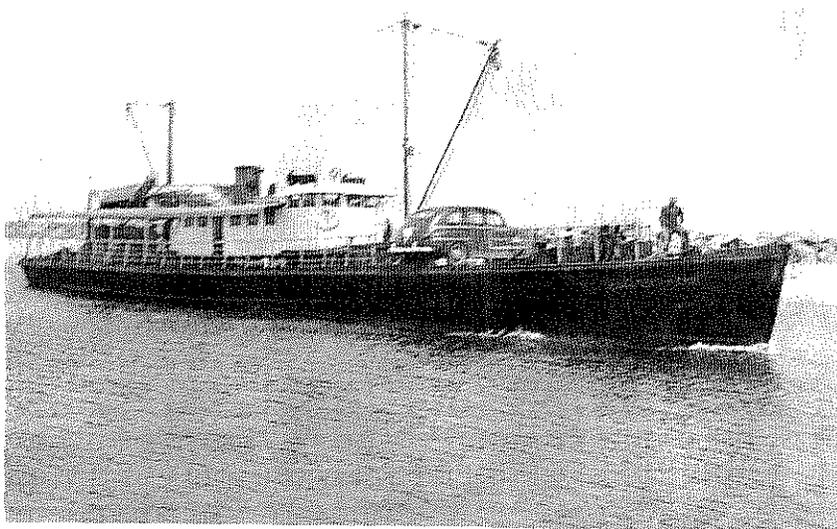
She began Block Island service in 1920, continuing here until wrecked at her Providence dock in the great 1938 Hurricane. ▼



◀ **LIZZIE ANN's pilothouse**

Richard Dodge — founder of Dead Eye Dick's Restaurant in the mid-1930s — sits next to a life preserver attached to the original pilothouse of the World War I ex-submarine chaser.

See pages
144, 152, 172 & 255-7
for more of Interstate's
continuing story



Interstate Navigation Company's
principle boats, 1928-1960s

SEE PHOTOS:

ELIZABETH ANN	— ran 1928-1950	— 104' x 14'	— built 1917	— p. 144
NELSECO II	— ran 1921-1960	— 110' x 29'	— built 1917	— p. 172, 231
WESTPORT	— ran 1939-1941	— 125' x 21'	— built 1911	— p. 107, 114, 152-3
MONHEGAN	— ran 1920-1938	— 128' x 26'	— built 1903	— p. 104
BLOCK ISLAND (#2)	— ran 1940-1983	— 136' x 29'	— built 1907	— p. 152 (twice)
Renamed YANKEE in 1948				191, 256-257
VIKING	— ran 1940	— 104' x 14'	— built 1917	— p. 153
ROCKET	— ran 1945-1950	— 78' x 17'	— built 1932	— p. —
CHAUNCEY M. DEPEW	— ran 1948 only	— 185' x 35'	— built 1913	— p. 172
SPRIGG CARROLL	— ran 1949-1970	— 106' x 23'	— built 1903	— p. 200-201
RANGER	— ran late-40s-53	— 104' x 15'	— built 1917	— p. —
QUONSET	— ran 1957-1987	— 135' x 29'	— built 1915	— p. 192, 255
BLOCK ISLAND (#3)	— ran 1960-1986	— 150' x 40'	— built 1926	— p. 254

conception or construction — and the surrounding land for hundreds of yards is state property. Point Judith itself is a man-made harbor, the immense breakwaters built with federal funds in the early 1900s for the betterment of the country at large.

In 1935 a new Block Island ferry company was begun, Sound Steamship Lines, that helped bring back larger ferries to the island — see the following two pages. During the next 20 years Sound Steamship and Interstate Navigation were in direct competition.

In 1939 Interstate added the 125-foot **WESTPORT**, with a capacity of 600 passengers and eight cars. But with global war becoming increasingly obvious, things began happening fast, and, along with many other ferries the **WESTPORT** was taken into military service in 1941, just before the United States went to war.

The 136-foot **HOOK MOUNTAIN**, built in 1906, was purchased by Interstate in the fall of 1939. She had a slightly larger capacity of 800 passengers and 10 cars. Renamed the **BLOCK ISLAND**, the old steamer ran from Providence to Old Harbor until being sold in February 1941 to the Navy to transport newly hired workers hired to fortify the nearby naval bases. The bombing of Pearl Harbor was 10 months away.

After the war the **BLOCK ISLAND** resumed the Providence run, and in 1948 was again renamed, as **YANKEE** — she is the last of the old ferries still afloat, now being preserved in Manhattan under private ownership, see photos of her on pages 152 and 256-257.

**ELIZABETH ANN & one car,
arriving at Old Harbor — 1940s**

Perhaps the most endearing attribute of the **LIZZIE ANN** was her ability to carry only one automobile — which had to be strapped crossways near the bow — a monumental testament to an era far simpler, more peaceful and pleasant.

The **LIZZIE ANN** was the driving force of Interstate Navigation Company from the 1920's into the late-1940's, and was the island's link to the mainland throughout much of World War II when larger vessels were taken for war service. She is fondly remembered by those who knew her.

Ferry schedule — 1930s

**Block Island - Stonington
Motor Ship
"ELIZABETH ANN"**

YEAR **SERVICE** ROUND

Daylight Saving Time

JUNE SCHEDULE:

Leave Stonington	12 Noon	Leave Block Island	4 P. M.
10 A. M.			4 P. M.
12 Noon			4 P. M.

Winter Schedule Announced Oct. 1

TWO HOURS' DELIGHTFUL SAID FROM
STONINGTON TO BLOCK ISLAND

Summer Schedule, June 30 to Sept. 4, inclusive, affords a 4-hour stay on Block Island, allowing ample time for a shore dinner and swim.

Bus Connections at Chesbro's Dock, Stonington

Excellent Rail Connections to Boston and New York

Interstate Navigation Co.

Phone Mystic 586

New London 8467