AMERICAN CIVIL LIBERTIES UNION
Rhode Island

128 Dorrance Street, Suite 400
Providence, RI 02903
Phone: (401) 831-7171
Fax: (401) 831-7175
www.riaclu.org
info@riaclu.org

COMMENTS ON PROPOSED AMENDMENTS TO DEPARTMENT OF ENVIRONMENTAL MANAGEMENT "DEFINITIONS AND GENERAL PROVISIONS"
250-RICR-90-00-1
February 27, 2023

The ACLU of Rhode Island appreciates the opportunity to provide testimony on these draft regulations which make various amendments to the definitions used by the Department in its rules. We wish to briefly comment on one of the definitions that it seeks to amend.

Specifically, the proposal would amend the definition of "medical hardship," which appears in Section 1.13, "Definition of Terms," as follows:

> "Medical hardship" means a significant medical condition that ~~prevents a license holder from meeting licensing application requirements.~~ renders an active licensed person unable to fish for a period in excess of fourteen (14) days, either as a result of the physical loss of function or impairment of a body part or parts, or debilitating pain. Demonstration of the medical hardship shall be in the form of a diagnosis and prognosis signed by a medical doctor (M.D. or O.D.).

As far as we have been able to ascertain from a search of the agency's rules, the term "medical hardship" appears in only one other regulation of the Department, dealing with "Commercial Marine Fishing Licenses, Landing Permits, and Party and Charter Licenses." [250-RICR-90-00-2] More specifically, it appears in a section dealing with qualifications for a temporary operator's permit.

Our concern about this definitional change is twofold. First, it potentially significantly narrows the circumstances that constitute a "medical hardship," and more concerningly, it would eliminate any medical condition that is not physical in nature. It would thus appear to exclude a person from qualifying for a temporary operator's permit if their medical condition involves mental, rather than physical, illness. We believe such a limitation is inappropriate and in conflict with state and federal anti-discrimination laws.

Second, it is unclear to us why the Department seeks to require specific information about the illness that is the cause of the medical hardship. This strikes us as unduly invasive of the applicant's privacy, and seems to put the Department in the position of wanting to second-guess a medical professional as to the impact of a medical condition on a person's ability to engage in commercial fishery.

We therefore request that the current definition either be retained or amended along the following lines:

"Medical hardship" means a significant medical condition that ~~prevents a license holder from meeting licensing application requirements.~~ renders an active licensed person unable to fish for a period in excess of fourteen (14) days. Demonstration of the medical hardship shall be in the form of an attestation signed by a medical doctor (M.D. or O.D.).

Thank you in advance for your consideration of these comments. If the suggestion we have made is not adopted, we request, pursuant to R.I.G.L. §42-35-2.6, a statement of the reasons for not accepting these arguments.

Submitted by: Steven Brown, Executive Director