

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

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16200
February 15, 2012

Mr. [REDACTED NAME]
[REDACTED ADDRESS]
[REDACTED CITY, STATE, AND ZIP]

RE: Case No. 3569729
[REDACTED NAME]
[REDACTED VESSEL]
Dismissed

Dear Mr. [REDACTED NAME]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 3569729, which includes your appeal as operator of the unnamed recreational vessel (personal watercraft, or PWC) [REDACTED VESSEL]. The appeal is from the action of the Hearing Officer in assessing a \$1,000.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 USC 2302(a)	Operating a recreational vessel in a negligent manner or interfering with the safe operation that endangers life, limb or property of a person.	\$1,000.00

The violation is alleged to have occurred on July 10, 2009, when Coast Guard boarding officers observed you operating your vessel on Bellingham Bay, near Bellingham, Washington.

On appeal, you deny the violation.

As used in 46 USC 2302, negligence is the failure to use that care which a reasonable person would exercise under similar circumstances. It is the operator's breach of that standard of care so as to endanger the life, limb, or property of a person that constitutes a violation of the law.

The beginning of the story is essentially undisputed. Your PWC approached the Coast Guard Cutter TERRAPIN on a reciprocal path on TERRAPIN's starboard bow, then altered course slightly to cross the cutter's bow about 100 yards ahead of it, passing down the port side of the cutter at a distance of about 25 yards. The Coast Guard states that you were travelling at a high rate of speed; you state that you were travelling at approximately 35 miles per hour. As you crossed one of TERRAPIN's wakes, something happened; at this point there are conflicting versions of events. All but one of the Coast Guard statements state that you fell off the PWC and had to climb back on. The other statement does not say whether you did or did not fall off. You

say you did not fall off, but you dropped a water bottle and went back to pick it up. The Coast Guard statements all say that a small boat 200 yards or more behind TERRAPIN had to change course to avoid you. You say that the small boat was not close enough to be affected by you and changed course only to cross TERRAPIN's wake.

The Hearing Officer acknowledges both versions and does not make explicit which version of events he believes happened, although he implies that he is not convinced the small boat did not act to avoid you. Furthermore, although he appears to criticize your speed, he does not make clear what about your action was negligent or unreasonable. Even more important, there is no evidence of a standard of care, i.e. what a reasonable person would or would not do in the circumstances.

Given the lack of evidence of a standard of care that was breached, the violation has not been proved. The charge is dismissed.

In accordance with the regulations governing civil penalty proceedings, 33 CFR Subpart 1.07, this decision constitutes final agency action.

Sincerely,

L. I. McCLELLAND
Civil Penalty Appellate Authority
By direction of the Commandant

Copy: Coast Guard Hearing Office