



## I DRANK, BUT I DIDN'T DRIVE

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Particularly during the holiday season, many have heard the warnings about not drinking alcohol and driving a *vehicle*. Hopefully it makes sense that this warning is also applicable to drinking alcohol and operating a *vessel*. In order to establish that a boating under the influence (BUI) violation has occurred, evidence should indicate that not only was the subject under the influence, but also that the subject was operating a vessel. Sometimes a *recreational* boater will respond to the BUI allegation admitting the first element (being under the influence), but disputing the second (operating a vessel). These arguments often fail to focus on the significant issues because the boater does not have a good understanding of Title 33, Code of Federal Regulations, Part 95 (33 CFR § 95.001 and following), which sets forth the regulatory framework by which a person is determined to be operating a vessel under the influence.

First, a few definitions are necessary in order to fully understand the terms the Hearing Officer will consider when deciding if a violation has occurred. According to 33 CFR § 95.010, a “*Vessel* includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.” So it is quite likely that, besides a motorboat, a sailboat, a rowboat, or a raft could also be considered a vessel. Additionally, “*Underway* means that a vessel is not at anchor, or made fast to the shore, or aground.” So even if a vessel is drifting, it is still considered underway.

If the boater was on a vessel, and the vessel was underway, as those terms are defined by the regulations, the Hearing Officer will next determine whether or not the boater was operating the vessel. According to 33 CFR § 95.015, “... an individual is considered to be operating a vessel when... The individual has an essential role in the

operation of a recreational vessel underway, including but not limited to navigation of the vessel or control of the vessel's propulsion system.”

Although some examples are given, the term “an essential role” is not defined. Therefore evidence that describes the specific circumstances must be considered to determine operation of the vessel. Simply having a “designated driver” at the controls does not exclude another from also operating the vessel. If physical actions (handling the oars, sails, throttle, rudder, tiller, or helm) or verbal directions (where to go, or how to operate) are involved, then the charged boater can be considered to have had “an essential role” in the operation of the vessel. Other considerations (when provided) include the purported operator's (and/or charged boater's) age, experience level, and familiarity with the area.

So, before alleging a violation, or disputing a BUI charge, consider the applicable regulations discussed above, and ensure your evidence or arguments are focused on the matters that will really tend to prove or dispute the alleged violation.