

## SECTION 32 — APPEALS AND QUESTIONS

### APPEAL 2

*Doon vs. Esperanza*  
*Cacouette vs. Doon*

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#### Rule 10, On Opposite Tacks

#### Rule 20, Room to Tack at an Obstruction

#### Rule 43.1(a), Exoneration

#### ~~Rule 64.1(a), Decisions: Penalties and Exoneration~~

*When a port-tack leeward boat on a collision course with a starboard-tack boat hails the port-tack windward boat for room to tack and she fails to respond, the port-tack leeward boat's obligation under rule 10 continues. The hailing boat is not compelled to break rule 10 if she can avoid breaking it after it becomes clear that the hailed boat has broken rule 20.2(c). She therefore ~~cannot be~~ is not exonerated ~~by~~ under rule ~~43.1(a), 64.1(a)~~*

[ REVISED diagram ]

#### Facts and Decision of the Protest Committee

Three small scow-type boats approached a windward mark to be left to port, one on starboard tack and two on port tack. *Esperanza* (PW) hailed *Doon* (PL) for mark-room under rule 18.2(b) (Mark-Room: Giving Mark-Room), and PL hailed PW for room to tack under rule 20.1. PW failed to respond. *Cacouette* (S) luffed to avoid a collision, and both PW and PL tacked around the mark inside her.

PL claimed that she did not bear away under the stern of S because she thought that, with the type of boat and the strength of wind, a collision would result. However, the protest committee found that she could have borne away safely or slacked her sheets.

PW was disqualified ~~for breaking~~ under rule 20.2(c) on PL's protest and did not appeal. PL was disqualified ~~for breaking~~ under rule 10 on S's protest and she appealed.

#### Decision of the Appeals Committee

Both PW and PL were required to keep clear of S, ~~by~~ under rule 10 while on port tack and ~~by~~ under rule 13 (While Tacking) after passing head to wind while tacking. PW was correctly disqualified for breaking rule 20.2(c), by not responding to a hail for room to tack.

Because PW and PL were overlapped when the first of them reached the zone, rule 18.2(b) began to apply at that time. However, that rule ceased to apply when PL hailed for room to tack (see rule 20.2(e)).

When PW failed to respond to PL's hail for room to tack, PL was faced with the necessity of taking alternative action to avoid S. This raises the question of whether

she ~~was~~ should be exonerated ~~by~~ under rule ~~43.1(a) 64.1(a) 64.2(a)~~ as the innocent victim of another boat's breach. We think not, since the protest committee found that PL could have gone astern of S after it became clear that PW was not giving her room to tack as required by rule 20.2(c). A boat breaking a rule is not ~~entitled to~~ exonerated ~~by~~ ~~tion~~ under rule ~~43.1(a) 64.1(a) 64.2(a)~~ unless she was compelled by another boat to break a rule.

PL's appeal is denied. The decision of the protest committee is upheld, and both PL and PW remain disqualified.

Note that Appeal 19 addresses a similar incident.

*November 1940*

*Revised January 2021, to conform to the new exoneration rules and to clarify in the diagram~~17~~ that S had to take avoiding action*

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### APPEAL 3

*Red Hed vs. Sea Urchin*

#### **Definitions, Mark-Room**

#### **Rule 11, On the Same Tack, Overlapped**

#### **Rule 14, Avoiding Contact**

#### **Rule 18.2(b), Mark-Room: Giving Mark-Room**

#### **Rule 43.1(c), Exoneration**

*An inside windward boat, given sufficient mark-room at a mark, is required to keep clear of an outside leeward boat. A right-of-way boat may not be penalized ~~for breaking~~ under rule 14 unless there is damage or injury.*

[ diagram ]

#### **Facts and Decision of the Protest Committee**

Two boats, 16 feet long, broad-reaching on starboard tack, were approaching a mark to be left to starboard, the next leg being a beat to windward. L established an outside overlap on W from clear astern shortly before W reached the zone. As the boats rounded the mark, W bore away as a consequence of poor seamanship, and L continued to yield in order to avoid contact until the boats were three hull lengths beyond the mark. At that point beam to beam contact occurred without damage or injury.

The protest committee disqualified W for breaking rule 11. W appealed.

#### **Decision of the Association Appeals Committee**

The association appeals committee confirmed W's disqualification and also disqualified L for breaking rule 14 by failing to avoid contact. L appealed.

#### **Decision of the Appeals Committee**

L was entitled to sail up to her proper course. W failed to keep clear of L, breaking rule 11. Accordingly, W's disqualification is confirmed. In this situation, rule 18.2(b) makes exception to rule 11 only so far as to require the outside boat, although holding right of way, to give the inside boat mark-room. The space to which W is entitled is only that necessary in the circumstances for her, in a seamanlike way, to sail to the mark and then head up to a close-hauled course (see the definition Mark-Room).

The disqualification of L for breaking rule 14 was incorrect. Rule ~~14(b)~~43.1(e) 43.1(c) expressly provides that, when the contact causes neither damage nor injury, the right-of-way boat ~~is shall be~~ exonerated.

L's appeal is upheld. The decision of the association appeals committee disqualifying L is reversed. The decisions of the association appeals committee and the protest committee regarding W are unchanged.

July 1941

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## APPEAL 4

*Solenta vs. Mist*

### Definitions, Proper Course

#### Rule 17, On the Same Tack; Proper Course

#### Rule 19.2(b), Room to Pass an Obstruction: Giving Room at an Obstruction

*When a boat intervenes between two others on the same tack, her proper course is to keep clear of the leeward boat.*

[ diagram ]

### Facts and Decision of the Protest Committee

While sailing on a broad reach towards a leeward mark, *Mist* (M) overtook *Solenta* (W) and L, and obtained an overlap between them when they were about 50 feet apart. The boats were about 25 feet in length. Rule 17 did not apply between L and W. L luffed slightly and M responded, but W maintained her course and trimmed in her mainsail to avoid contact with M.

W protested M, claiming she broke rule 17, in that, as a leeward boat having become overlapped from clear astern, she had sailed above her proper course. The protest committee disqualified M, who appealed the decision.

### Decision of the Appeals Committee

When M became overlapped with W, W was able to give M room to pass L, an obstruction; therefore W was required to give M room to pass L ~~by~~under rule 19.2(b), and was also required by rule 11 (On the Same Tack, Overlapped) to keep clear of M. Concerning W's argument, M's proper course in the absence of W, the

other boat referred to in rule 17 (see the definition Proper Course), was to luff in response to L's luff, which she did as required by rule 11.

M's appeal is upheld. The decision of the protest committee is reversed, and M is reinstated in her finishing place. Since W kept clear of M by trimming in her mainsail, she complied with rule 11 and also gave M room as required by rule 19.2(b).

February 1942

Revised January 2021, to clarify that rule 17 did not apply between L and W

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## APPEAL 5

*L vs. M and W*

### Part 2, Section C Preamble

#### Rule 18.2, Mark-Room: Giving Mark-Room

*Ignorance of the rules is no excuse for breaking a rule. A boat without right to mark-room that takes room given in error breaks no rule.*

[ diagram ]

#### Facts and Decision of the Protest Committee

Three boats, W, M, and L, were approaching the starting line on port tack to start at the port-end mark. L was close-hauled and heading just to leeward of the mark. W and M converged with L and compelled her, in order to avoid a collision, to bear away and allow them room to pass between her and the mark. Both W and M took advantage of the room provided by L to pass between L and the mark. L protested both M and W for breaking rule 11 (On the Same Tack, Overlapped).

At the hearing, M stated that she was unaware of the preamble to Section C. She thought that she ~~was required~~ had to give mark-room to W ~~by~~ under rule 18.2(b), and L had to give mark-room to both M and W. W knew she was not entitled to mark-room at the mark, and she had made no such claim, but simply took advantage of the room given by M, and passed between her and the mark.

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The protest committee disqualified both M and W for breaking rule 11. W appealed.

#### Decision of the Appeals Committee

Since L ~~was not required to give~~ did not owe M mark-room ~~by~~ under rule 18, because of the exception in the Section C preamble, M's disqualification for breaking rule 11 is upheld. Ignorance of the rules is no excuse for breaking a rule.

With regard to the disqualification of W, when a boat voluntarily or unintentionally makes room available to another boat that, under the rules, has no right to that room

and makes no claim to it, that other boat may take advantage, at her own risk, of the room so given. In that case, she breaks no rule.

W's appeal is upheld. The decision of the protest committee disqualifying W is reversed, and she is reinstated in her finishing place. M remains disqualified.

December 1950

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## APPEAL 6

*Great Scot and Jolee vs. Black Jac*

**Definitions, Obstruction**

**Definitions, Room**

**Rule 10, On Opposite Tacks**

**Rule 11, On the Same Tack, Overlapped**

~~**Rule 21, Exoneration**~~

**Rule 19.2(b), Room to Pass an Obstruction: Giving Room at an Obstruction**

~~**Rule 43.1(a), Exoneration**~~

~~**Rule 43.1(b), Exoneration**~~

~~**Rule 43.1(b), Exoneration**~~

~~**Rule 64.1, Decisions: Penalties and Exoneration**~~

~~**Rule 64.2, Decisions: Penalties**~~

~~**Rule 64.2, Decisions: Penalties**~~

*A leeward port-tack boat must give a windward port-tack boat room to pass a starboard-tack boat that is an obstruction. Rule ~~64.2 64.1 64.2~~ permits the disqualification of a boat that was a party to a protest hearing, even if she was not protested.*

[ diagram ]

### Facts and Decision of the Protest Committee

Three Thistles, *Jolee* (WS), *Black Jac* (M), and *Great Scot* (L), were broad-reaching on port tack on approximately parallel courses toward a distant mark. WS and L were separated by about five hull lengths when M intervened and established an overlap on both WS and L. Midway between positions 3 and 4 in the diagram, WS gybed onto starboard tack to close with the mark. Shortly afterward, L luffed, forcing M to luff into the path of WS. WS, in order to avoid a collision, luffed sharply and passed astern of both M and L. M stopped luffing because of the proximity of WS, and M and L collided. There was no damage or injury.

WS protested M for breaking rule 10, and L protested M for breaking rule 11. The protest committee dismissed L's protest against M on the grounds that she did not have the right to force M into the path of WS when both M and L were obligated to

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keep clear of WS. Although M broke rule 10, the protest committee decided she was exonerated ~~her~~ on the grounds that it was L's improper luff that prevented M from keeping clear of WS. M did not break rule 14, because it was not reasonably possible for her to avoid contact with L. L broke rule 14, but was not disqualified for breaking under that rule because there was no damage or injury. The protest committee disqualified L under rules 16.1 (Changing Course) and 19.2(b), and she appealed.

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### **Decision of the Appeals Committee**

At position 4, WS, on starboard tack, had right of way over both M and L, and was therefore an obstruction to both of them. M, overlapped inside L, was entitled, under rule 19.2(b), to room from L to pass the obstruction. L failed to give her that room. Furthermore, when L luffed she was required by rule 16.1 to give M room to keep clear, which she also failed to do.

M broke rule 10, but since she was ~~the victim of compelled to break rule 10 by~~ another boat's breach of the rules, namely L's failure to give her room, she ~~is was~~ correctly exonerated ~~under rule 21(a) by both rule 43.1(a) and 43.1(b)~~ 43.1(b).

Inasmuch as L was a party to a hearing, she was subject to penalty under rule ~~64.1~~ 64.2 even though she had not been protested.

L's appeal is denied. The decisions of the protest committee to disqualify L and exonerate M are upheld.

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*November 1951*

*Revised January 2021, to conform to the new exoneration rules*

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## **APPEAL 8**

### *Lemolo Request for Redress*

**Rule 63.2, Hearings: Time and Place of the Hearing; Time for Parties to Prepare**

**Rule 63.3(a), Hearings: Right to Be Present**

**Rule 63.6(a), Hearings: Taking Evidence and Finding Facts**

**Rule 65.2, Informing the Parties and Others**

**Rule 71.2, National Authority Decisions**

*A protest must be made available to the parties, but providing a copy is not required. A written decision is not necessary unless requested by one of the parties. However, each party is entitled to be represented at the hearing and witnesses must be allowed to testify. Failure to meet any of these requirements makes the hearing invalid.*

**Facts and Decision of the Protest Committee**

*Lemolo* (X) was disqualified for breaking a rule of Part 2 and appealed. She contended that, since the procedures followed by the protest committee in the hearing did not conform to many of the requirements in rule 63 (Hearings), her disqualification should be set aside.

The grounds for her appeal were that: neither the protest nor a copy of it had been furnished to her; her representative had not been allowed to be present during Y's testimony; witnesses waiting to be heard were not permitted to testify; and a copy of the decision was not communicated to her in writing as required by rule 65.2.

The protest committee responded that its failure to comply with the provisions of rule 63 on the last day of a regatta was because "It had to deal with a large number of protests on that day. The wind was light, and the races were not completed until fairly late in the afternoon. The committee just did not have time to comply with all the formalities usually required."

#### **Decision of the Appeals Committee**

Rule 63.2 required that the protest be made available to her, but not that it be "furnished" or given to her with no request from her. There is no evidence that it was not available. Rule 65.2 requires that a protest committee give a party its decision in writing, but only if the party asks for it. There is no evidence that the appellant did so. However, the protest committee should not have excluded X's representative from the hearing, or prevented witnesses from testifying (see rule 63.3(a) and rule 63.6(a)).

X's appeal is upheld. The protest committee's errors made the hearing invalid; therefore the decision of the protest committee is nullified. However, because those errors are correctable, the protest is returned for a new hearing and decision by the same protest committee, as permitted by rule 71.2.

*December 1953*

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## **APPEAL 10**

*Race Committee vs. Lightning 2732*

### **Definitions, Mark**

#### **Rule 31, Touching a Mark**

*Although a boat does not break rule 31 by touching a mark's anchor line, if that causes the mark to be drawn into contact with the boat, she does break it.*

### **Facts and Decision of the Protest Committee**

The protest committee disqualified *Lightning 2732* for breaking rule 31, in that she touched a mark and did not ~~exonerate herself under~~ take a penalty as allowed by rule 44.2 (One-Turn and Two-Turns Penalties). She cleared the mark by five feet or

more, but it was drawn against her hull as she rounded. This was a consequence of its submerged anchor line passing along the forward edge of her centerboard, the bottom of which was almost five feet below the surface. *Lightning 2732* appealed.

### Decision of the Appeals Committee

An anchor line, as stated in the definition Mark, is not part of a mark. Therefore, there is no penalty for touching it. If, however, fouling its anchor line causes the mark to be drawn against the boat, the boat has broken rule 31.

*Lightning 2732*'s appeal is denied. The decision of the protest committee is upheld, and *Lightning 2732* remains disqualified.

December 1954

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## APPEAL 12

*Julie vs. Solution*

**Rule 14, Avoiding Contact**

**Rule 16.1, Changing Course**

**Rule 43.1(a), Exoneration**

**Rule 43.1(b), Exoneration**

**Rule 64.1(a), Decisions: Penalties and Exoneration**

*A boat that breaks a rule, but is compelled to do so by a breach of a rule by a third boat, shall be exonerated.*

[ diagram ]

### Facts and Decision of the Protest Committee

Before the preparatory signal, PW and *Julie* (PL) were approaching *Solution* (S), on starboard tack, on converging courses. All three were relatively large boats. The wind was very light, and all boats were moving slowly, but S somewhat faster than the others. At position 2, about one minute after the preparatory signal, PW attempted to tack but lost way and was head to wind when S, having held her course until she was about eight feet from PW, then turned to port about 60 degrees to avoid contact with PW.

The drastic turn by S to avoid PW resulted in a collision between S and PL; otherwise PL would have passed well to leeward of S. There was ample room for S to pass astern of PW and to windward of PL without causing PL to change course. S attempted to do so and hailed PL that she was turning to starboard. However S failed to respond to her helm and hit PL amidships at approximately right angles causing no damage or injury.

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S protested PW and PL ~~for breaking under~~ rule 10 (On Opposite Tacks), and PL protested S for breaking rule 16.1 by changing course and failing to give PL room to keep clear. The protest committee disqualified PW for breaking rule 10, disqualified S for breaking rule 16.1, and dismissed S's protest against PL. S appealed.

#### Decision of the Association Appeals Committee

The association appeals committee reversed the decision of the protest committee with respect to S and PL, reinstated S, and disqualified PL for breaking rule 10. PL appealed.

#### Decision of the Appeals Committee

PL was under no obligation to foresee that S would be unable to reverse course, particularly in view of S's hail that she was turning to starboard. Furthermore, it is doubtful that PL could have avoided the collision by changing her course after it became ~~clear~~ apparent to her that S was not giving her room to keep clear (see rule 14) a collision was imminent. Indeed, the facts do not disclose any failure on PL's part to act as required by the rules.

When S bore away to avoid PW, she changed course so as to prevent PL from keeping clear, breaking rule 16.1. However, rule ~~43.1(a) 64.1(a)~~ gives recognition to extenuating circumstances, by ~~exonerating providing for the exoneration of a boats~~ that ~~are~~ was compelled to break a rule. The principle is that the boat that caused the trouble should be penalized, rather than some other boat (often referred to as the innocent victim).

While S might have changed course before she did, she was under no obligation, in the circumstances, to foresee sooner that PW would not clear her. Inasmuch as S's change of course and the subsequent collision between S and PL were the direct consequences of PW's breach of rule 10, S is exonerated by rule 43.1(a) for her breach of rule 16.1, and PL is exonerated by both rule 43.1(a) and 43.1(b) for her breach of rule 10. and PL were entitled to be exonerated under rule 64.1(a). Because it was not reasonably possible for S or PL to avoid the collision, neither boatshe did not break broke rule 14.

PL's appeal is upheld. The decisions of both the association appeals committee and the protest committee with respect to S and PL are changed. PL is reinstated in her finishing place, S is exonerated, and PW remains disqualified.

*August 1958*

*Revised January 2021, to clarify application of rule 14*

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### APPEAL 13

*L vs. W*

**Definitions, Proper Course**

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### **Rule 11, On the Same Tack, Overlapped**

### **Rule 17, On the Same Tack; Proper Course**

*Different boats may have different proper courses at any given moment. When those proper courses conflict, the leeward boat subject to rule 17 is entitled to sail her proper course.*

[ diagram ]

### **Facts and Decision of the Protest Committee**

About 1.2 miles from the leeward mark, L and W were broad-reaching on starboard tack, W using only her main and jib and L carrying a spinnaker. L established a leeward overlap from astern, which continued for at least eight to ten hull lengths when L bore away to try to avoid contact. W was not heading below the leeward mark.

When the overlap was first established, L was between one and two of her lengths to leeward. She did not change course until just before the collision. W hailed L twice before the collision. L did not hear the hails and was unaware that a collision was imminent. No damage or injury resulted from the collision. The protest committee disqualified W ~~for breaking under~~ rule 11 ~~by~~ failing to keep clear and ~~for breaking under~~ rule 14 ~~by~~ failing to avoid contact. It also decided that L broke rule 14, but ~~could not be penalized~~ was exonerated by rule 43.1(c) (Exoneration) for that breach because the contact did not cause damage or injury. W appealed.

### **Decision of the Appeals Committee**

The protest committee found that when L first established her overlap she was at least a hull length to leeward of W. That being so, there can be no question that L “initially” gave W room to keep clear as required by rule 15. W was required to keep clear ~~by under~~ rule 11. Conversely, L, having been clear astern before the overlap began, was required by rule 17 not to sail above her proper course while the boats remained on the same tack and overlapped within two lengths.

Different boats may have different proper courses at any moment depending on the circumstances. However, when those proper courses put the boats on converging courses, the windward boat must keep clear of the leeward boat.

L’s proper course was the course that she ~~would~~ choosesail, in the absence of W (the other boat referred to in rule 17), in order to sail the course and to finish as quickly as possible (see the definition Proper Course). The mark was a considerable distance away. There is no evidence that L was sailing above her proper course. Thus, she was fulfilling her requirement with respect to rule 17. W was required by rule 11 to keep clear of L, and she failed to do so.

W’s appeal is denied, the decision of the protest committee is upheld, and W remains disqualified.

*February 1959*

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*Revised January 2021, to conform to change in the definition Proper Course*

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## APPEAL 15

*Brigadoon vs. Magoo*

### Definitions, Obstruction

#### Rule 20, Room to Tack at an Obstruction

~~Rule 21(a), Exoneration~~

~~Rule 43.1(b), Exoneration~~

Rule 43.1(a), Exoneration

*A boat is permitted to hail another for room to tack when a substantial course change is required for her to avoid the obstruction.*

[ diagram ]

### Facts and Decision of the Protest Committee

*Brigadoon* (W) and *Magoo* (L) were sailing on a windward leg with L to leeward and clear ahead. Both were on starboard tack and approaching a 50-foot police launch that was aiding a capsized boat. The police launch was close to the capsized boat, which was to leeward of the launch. L could not pass to windward of the launch without ~~tacking~~~~changing course~~ and hailed W for room to tack. ~~W did not tack or reply 'You tack.'~~ By the time it was clear that W would not respond, the only maneuver available to L to safely avoid the police launch was to tack. A few seconds later L tacked and W, instead of tacking or replying 'You tack,' bore away to clear her.

W protested L on the grounds that L was not entitled by rule 20.1 to hail W for room to tack. The protest committee disqualified L, stating that "L could have avoided the obstruction by bearing away herself. There was open water all around it." L appealed.

### Decision of the Appeals Committee

The police launch was an obstruction since L could not pass it without "changing course substantially" if she were "one of her hull lengths from it." This, however, did not necessarily give her the right to hail W for room to tack. If she had approached the police launch sufficiently close to its leeward end so that, with only a slight change of course when one of her hull lengths from it, she could have safely passed to leeward of it, she should have done so. That was not the case here. As is clear in the diagram, L's course brought her close to the windward end of the police launch. She had to either tack to pass it to windward or bear away substantially to pass it to leeward. Inasmuch as she was required to change course substantially to

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clear the obstruction whichever side she passed it, she had a right under rule 20.1 to hail W for room to tack.

Rule 20.2 covers this situation. L complied with rule 20.2(a). When L hailed, rules 20.2(b) and 20.2(c) required W to respond by tacking as soon as possible, or by immediately replying ‘You tack,’ even if she thought L’s hail was not permitted by rule 20.1. W failed to do so, and as a result compelled L to break. ~~L’s tack broke rule 13 or rule 10; therefore, L, but she~~ is exonerated ~~by~~under rule ~~43.1(a), 21(a) 43.1(b)~~.

L’s appeal is upheld, the decision of the protest committee is reversed, L is reinstated in her finishing place, and W is disqualified for breaking rule 20.2(c).

December 1959

Revised January 2021, to clarify that L was exonerated by rule 43.1(a) because she was compelled to break a rule, but not by rule 43.1(b) because she was not sailing within the room she was entitled to under rule 20.2(c) because W did not hail ‘You tack’

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## APPEAL 16

*Flying Dutchman USA 546 vs. Flying Dutchman USA 800*

### Definitions, Racing

#### Part 2 Preamble

#### Rule 14, Avoiding Contact

#### Rule 23.1, Interfering with Another Boat

#### ~~Rule 23.1, Interfering with Another Boat~~

#### ~~Rule 24.1, Interfering with Another Boat~~

*When no part of a boat’s hull, equipment or crew is still on the finishing line, she has cleared it. A boat that has finished and cleared the finishing line and its marks is no longer racing and is not subject to penalty, unless she breaks rule 14 and causes injury or serious damage, or interferes with a boat still racing. Rule 14 applies to a boat that is racing, even if the contact is with a boat no longer racing.*

[ diagram ]

### Facts and Decision of the Protest Committee

In a race of a Flying Dutchman national championship in light wind, *USA 800* was to leeward and approximately two hull lengths ahead of *USA 546* as the boats approached the finishing line. Both boats were beating on starboard tack. At the finishing line, *USA 800* luffed head to wind and finished first. As she cleared the finishing line her genoa backwinded, and she was forced onto port tack. *USA 546*

saw *USA 800* tack and could have borne away to avoid the contact, but failed to do so. Contact occurred after *USA 546* had finished but had not yet cleared the finishing line. Damage that was not serious resulted from the contact. *USA 546* protested *USA 800* for breaking ~~under~~ rule 10 (On Opposite Tacks) and rule ~~23.1, 24.1 23.1~~.

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The protest committee dismissed the protest, stating that because *USA 800* had finished and cleared the finishing line, she was no longer racing and therefore not subject to disqualification.

*USA 546* appealed, on the grounds that “clears the finishing line” must be interpreted to mean that a boat continues racing until she is sufficiently far from the finishing line that her maneuvers will no longer affect other boats that are still racing.

### Decision of the Appeals Committee

It is clear that *USA 800* broke rule 10 and rule 14 (Avoiding Contact). The question is whether she was still subject to disqualification. The preamble to Part 2 states: “...a boat not *racing* shall not be penalized for breaking one of these rules, except rule 14 when the incident resulted in injury or serious damage, or rule ~~23.1 24.1 23.1~~.” The definition *Racing* states: “A boat is *racing*...until she *finishes* and clears the finishing line and *marks*....” Failure to clear the finishing marks is not at issue here as neither mark’s position was influencing *US 800*’s choice of course (see Case 127); and when no part of a boat’s hull, equipment or crew is still on the finishing line, she has cleared it. Therefore *USA 800* was no longer racing at the time of the incident and cannot be penalized for breaking a rule of Part 2 (When Boats Meet), except rules 14 and ~~23.1 24.1 23.1~~.

The damage was not serious, therefore *USA 800* is not penalized for breaking rule 14.

Rule ~~23.1 24.1 23.1~~ states: “If reasonably possible, a boat not *racing* shall not interfere with a boat that is *racing*.” In this case, *USA 800* was not racing, but interfered with *USA 546* who was still racing. Furthermore, it was clearly possible for her to avoid the incident. Therefore, the decision of the protest committee is changed to disqualify *USA 800* for breaking rule ~~23.1 24.1 23.1~~. To that extent, *USA 546*’s appeal is sustained.

However, *USA 546*, because she had not yet cleared the finishing line, was still racing at the time of the incident. Therefore she was obligated by rule 14, even though she was the right-of-way boat, to avoid contact if it was reasonably possible to do so. When *USA 800* completed her tack, it was clear to *USA 546* that *USA 800* was not keeping clear. At that point it was reasonably possible for *USA 546* to have avoided contact, but she failed to do so (see rule 14(a)). Therefore *USA 546* broke rule 14, and is to be penalized because there was damage.

*USA 546*’s appeal is upheld. The decision of the protest committee is changed. Both *USA 546* and *USA 800* are disqualified.

January 1965

*Revised January 2021, to include the Case 127 phrase about the finishing mark not influencing US 800's choice of course*<sup>17</sup>

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## APPEAL 17

*Windmill 934 vs. Windmill 1367*

### Rule 13, While Tacking

### ~~Rule 14, Avoiding Contact~~

*“Head to wind” refers to the bow and centerline of a boat, not the position of her sails.*

[ diagram ]

### Facts and Decision of the Protest Committee

*Windmill 1367* (L) tacked from port to starboard into a position to leeward of *Windmill 934* (W), which was beating along the lay line to the mark. W, sailing faster, began passing L to windward, allowing three to four feet clearance. L changed course in two stages until head to wind. That position was evidenced by the fact that both boats' mains were luffing, and L's boom was along her centerline. Her jib was luffing from side to side. The boats drifted together with no damage or injury. W protested L ~~for breaking~~under rule 13, and L protested W ~~for breaking~~under rule 11 (On the Same Tack, Overlapped) claiming that she had the right to sail up to head to wind provided she met her requirement under rule 16.1 (Changing Course) to give W room to keep clear.

The protest committee decided that L did not go beyond head to wind. It also decided that L had given W room to keep clear. It disqualified W for breaking rule 11, and dismissed W's protest. The committee noted that W also broke rule 14 (Avoiding Contact), ~~and because she ~~but~~ was not sailing within the room she was entitled to at the time, she was not exonerated for that breach by rule, because W was entitled to “room” under rule 16.1 and the contact did not result in damage or injury, she is exonerated for that breach under rule 14(b) 43.1(e); 43.1(c) (Exoneration).~~

W appealed and the protest committee requested confirmation or correction of its decision under rule 70.2 (Appeals and Requests to a National Authority), believing that reasonable doubt existed as to the determination of “head to wind,” which was assumed to be when the centerline of the hull is parallel to the wind with bow upwind, irrespective of the position of sails.

### Decision of the Appeals Committee

A boat is head to wind when her bow is facing the wind, and the centerline of her hull is parallel to it, irrespective of the position of her sails.

**Commented [D9]:** Due to the change in 43.1(c) I have corrected our decision

W's appeal is denied, the decision of the protest committee is confirmed, and W remains disqualified.

September 1965

*Revised January 2021, to conform to the new exoneration rules*

*Revised January 2017*

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## APPEAL 18

*Race Committee vs. Lightning 9453*

### Definitions, Conflict of Interest

#### Rule 60.2, Right to Protest; Right to Request Redress or Rule 69 Action

US Sailing Prescription to Rule 63.14, Hearings: Requirement for a Hearing~~Hearings: Conflict of Interest~~

#### Rule 63.4, Hearings: Conflict of Interest

*A race committee member who is also a member of the protest committee does not have a conflict of interest solely by the race committee's act of protesting under rule 60.2.*

### Facts and Decision of the Protest Committee

While starting, *Lightning 9453* touched the starting mark which was a race committee boat. The race committee, acting under rule 60.2(a), protested her. The sailing instructions stated that the US Sailing prescription to rule 63.14 did not apply. The protest committee, which included a member of the race committee, heard the protest and disqualified *Lightning 9453* for breaking rule 31 (Touching a Mark).

*Lightning 9453* appealed, arguing in part that a member of the protest committee had also served on the race committee, and therefore had a conflict of interest.

### Decision of the Appeals Committee

The definition Conflict of Interest includes a person who "may gain or lose as a result of a decision to which he contributes...or has a close personal interest in the decision." A member of the race committee does not have a conflict of interest merely because the race committee protests a boat as permitted in rule 60.2(a).

*Lightning 9453's* appeal is denied, and the decision of the protest committee is upheld. *Lightning 9453* remains disqualified.

October 1966

*Revised January 2017*

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## APPEAL 19

*El Cordobes vs. Beachcomber and Diablo*

**Rule 20.2(c), Room to Tack at an Obstruction: Responding**

**Rule 43.1(a), Exoneration**

**Rule 64.1(a), Decisions: Penalties and Exoneration**

*When a port-tack leeward boat on a collision course with a starboard-tack boat hails the port-tack windward boat for room to tack and she fails to respond, the port-tack leeward boat's obligation under rule 10 continues. When the hailing boat cannot avoid breaking rule 10 after it becomes clear that the hailed boat has broken rule 20.2(c), the hailing boat has been compelled to break rule 10 and is exonerated ~~by~~under rule ~~64.1(a)-43.1(a)~~.*

[ diagram ]

**Facts and Decision of the Protest Committee**

Three boats of the Dragon class (*29-foot sloops displacing 3700 lbs.*), *Diablo* (PW), *Beachcomber* (PL), and *El Cordobes* (S), were close-hauled on port tack. S, which was to leeward and ahead of both PW and PL, tacked to starboard ~~and -S~~ completed her tack in compliance with rule 15 (Acquiring Right of Way).

Twice, PL hailed PW to tack, so that she also could tack and avoid S. By the time it was clear that PW would not respond (*position 2*), it was too late for PL to make any alternative maneuver without interfering with the oncoming S. PL called to S that she could not respond, whereupon S tacked back to port to avoid a collision.

S protested PL and PW ~~for breaking~~under rule 10 (On Opposite Tacks). PL protested PW ~~for breaking~~under rule 20.2(c). The protest committee disqualified PW and PL ~~for breaking~~under the rules cited. PL appealed.

**Decision of the Appeals Committee**

Inasmuch as PL would have had to make a substantial course change to pass astern of S, even if she had borne away instantly when S tacked to starboard, PL's hail did not break rule 20.1.

PW did not respond to PL's hail as required by rule 20.2(c) and was properly disqualified. However, she did not break rule 10 because at no time was she failing to keep clear of S.

~~By the time it was clear that PW was not responding to PL's hails, it was too late for PL to keep clear of S by bearing away. By the time it was clear that PW was not giving PL room to tack as required by rule 20.2(c), it was too late for PL to keep clear of S by bearing away.~~ Therefore, PL was compelled to break rule 10 as a consequence of PW's breaking rule 20.2(c), so PL is exonerated ~~by~~under rule ~~64.1(a)-43.1(a)~~.

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PL's appeal is upheld, and the decision of the protest committee is changed. PW remains disqualified, but PL is reinstated in her finishing place.

Note that Appeal 2 [and Case 3](#) address ~~a~~ similar incidents.

October 1967

Revised January 20~~17~~<sup>17</sup>

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## APPEAL 20

*International 110 664 vs. International 110 64*

### Definitions, Mark-Room

#### Rule 11, On the Same Tack, Overlapped

#### Rule 14, Avoiding Contact

#### Rule 18.2(b), Mark-Room: Giving Mark-Room

*Mark-room is not defined to allow an inside boat without right of way to sail to a mark in a tactically desirable manner.*

[ diagram ]

### Facts and Decision of the Protest Committee

*International 110 664* (OL) and *International 110 64* (IW) approached the leeward mark after a series of maneuvers for favorable position. When IW reached the zone, OL was overlapping her on the outside.

Both boats bore away from a direct course to the mark, and a collision (with no damage or injury) occurred when IW was about one length from the mark and sailing a course that would result in her passing about one length abeam of the mark. Both boats protested.

The protest committee held that IW, as an inside boat, was entitled to sufficient room to sail so as "to finish as quickly as possible" and that OL did not give sufficient room for IW to do so. Accordingly, it dismissed OL's protest and disqualified her for breaking rule 18.2(b).

OL appealed on the grounds that she gave IW more than enough room to sail to the mark, stating that she did not force IW to go close to or be in danger of touching the mark.

### Decision of the Appeals Committee

As the boats sailed to the mark in the zone, OL continued to be the right-of-way boat and IW was required to keep clear by rule 11. Rule 18.2(b) required OL to give IW mark-room, which is the space IW needed to sail to the mark in a seamanlike way, and not the space she would take to sail to the mark in a tactically desirable manner. In this case, IW was sailing a course that would bring her approximately one length abeam of the mark. That was space enough for another boat of the same class, even

with her mainsail fully out, to sail inside IW without contacting either her or the mark. This space was clearly more than needed by IW to sail to the mark in a seamanlike way. Therefore IW was not sailing within the mark-room to which she was entitled, and she is therefore not exonerated ~~by under~~ rule 43.1(b) (Exoneration).~~21 43.1(b), Exoneration.~~

~~It was reasonably possible for both boats to avoid contact; therefore they both broke rule 14. IW is not exonerated for breaking rule 14 because she was not sailing within the mark-room to which she was entitled (see rule 43.1(c)). However, OL is. However, both boats are exonerated by rule 43.1(c) for breaking rule 14 because she OL was the right-of-way boat and IW was entitled to mark room, and the contact did not cause damage or injury. ~~(see rule 14(b) 43.1(e)).~~~~

OL's appeal is upheld, and the decision of the protest committee is changed. IW is disqualified for breaking rule 11, and OL is reinstated in her finishing place.

May 1968

Revised January 2021, to conform to the new exoneration rules

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## APPEAL 21

### *Inferno Request for Redress*

#### **Rule 62.1, Redress**

#### **Rule J2.2(16), Sailing Instruction Contents**

*A race committee may use a course length for handicapping purposes that is different from the actual length, provided that the sailing instructions state that this will be done.*

#### **Facts and Decision of the Protest Committee**

The sailing instructions stated that the length of the course would be 34.5 statute miles, but in fact it was approximately 34.0 statute miles. The race committee was aware of the difference and intentionally used a length of 34.5 miles for handicapping purposes. *Inferno* requested redress because of the discrepancy. The protest committee denied the request on the grounds that the race committee had the right to adjust the course length for handicapping purposes, and because *Inferno*, having received the sailing instructions when she entered the race, was aware of the course length to be used. It therefore decided that her score was not affected "through no fault of her own." *Inferno* appealed.

#### **Decision of the Appeals Committee**

A race committee may use a course length chosen for handicapping purposes but the sailing instructions must state that it will do so. Wording such as "The approximate length of the course is 34.0 statute miles but 34.5 miles will be used for

handicapping” would have complied with rule J2.2(16). The phrase “through no fault of her own” in rule 62.1 did not make *Inferno*’s request for redress invalid; she bore no responsibility for the race committee’s failure to include its intentions in the sailing instructions. *Inferno*’s appeal is upheld and the decision of the protest committee is reversed. The race is to be scored using 34.0 miles for handicapping purposes.

*May 1969*

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## APPEAL 22

*Wayfarer 1115 vs. Wayfarer 1030 and others*

### Definitions, Conflict of Interest

#### Rule 63.4, Hearings: Conflict of Interest

#### Rule 70.5, Appeals and Requests to a National Authority

#### **Rule 70.5, Appeals and Requests to a National Authority**

~~CA~~ competitors in a race or series ~~have~~ a conflict of interest. ~~Their~~His participation in any part of a protest hearing, except as a witness or a party to the hearing, makes the hearing invalid unless all parties have consented to ~~their~~his participation, or the protest committee has decided that the conflict is not significant. Unless rule 70.5 applies, the right of appeal cannot be denied.

### Facts and Decision of the Protest Committee

Following the final race of the Wayfarer class national championship, *Wayfarer 1115*, sailed by the class commodore, protested the first five boats in the final standings for measurement discrepancies. *Wayfarer 1115* herself was one of these, as was *Wayfarer 1030*, sailed by the chief measurer.

The sailing instructions and the notice of race contained the following statements:

Boats must be measured before the regatta, and owners must present valid measurement certificates upon registration. All boats are subject to protest for measurement discrepancies. Measurement will be under the direct supervision of the measurer of the United States Wayfarer Association.

The decision of the regatta committee or any of its subcommittees with regard to, but not limited to...the disqualification of boats, will be final.

*Wayfarer 1752* objected to the composition of the “regatta committee” that measured the protested boats, claiming that several of its members had conflicts of interest because they were competitors.

Seven boats, one of which, *Wayfarer 1752*, lacked a valid certificate, were measured after the series. *Wayfarer 1752*, which finished first, was disqualified for having 14 pounds of corrective weight two feet forward of where it was required to be. The boats that finished 5th and 6th were disqualified for having black bands in incorrect positions on their spars. A small discrepancy was found in the location of the bilge keel of *Wayfarer 1030*, but since it had previously been accepted by the national committee of the class, the boat was not disqualified.

Most of the members of the regatta committee were competitors. Those in contention for a prize did not participate in the decision, but did participate in the discussion and measuring that preceded it. Other members of the regatta committee not in contention for prizes participated in the decision. The committee did not decide that the conflicts of interest were not significant. *Wayfarer 1752* appealed.

### **Decision of the Appeals Committee**

The provision in the sailing instructions quoted above, that decisions of the regatta committee would be final, was invalid because none of the conditions in rule 70.5 were met.

The regatta committee was acting as both the protest committee and the technical committee. Competitors on this committee took part in the discussions relative to disqualification after the series, and some of them, although not those in contention for a prize, participated in the decision.

This decision does not concern itself with the facts found and the decisions thereon. It concerns the right of a protest committee to render a decision when it has not conformed to the requirements of rule 63.4. That rule states: “A member of a protest committee with a *conflict of interest* shall not be a member of the committee for the hearing unless s...s-all parties consent, or ...-the protest committee decides that the conflict is not significant ... ””<sup>22</sup> The definition Conflict of Interest includes a person who may gain or lose as a result of a decision to which he or she contributes. A competitor has a conflict of interest, and in this case a party to the hearing objected to the composition of the committee. The hearing, in which a person who has a conflict of interest may not participate, includes discussions of the protest committee as well as its decision. Those members of the regatta committee who were also competitors should not have taken any part in the hearing other than as witnesses or parties.

*Wayfarer 1752*'s appeal is upheld. The decisions of the regatta committee are reversed, and the disqualified boats are reinstated in their finishing places.

*May 1969*

*Revised January 2021+7*

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## **APPEAL 23**

*Santana 125 vs. Santana 51*

~~Rule 50.3, Setting and Sheeted Sails: Use of Outriggers~~

~~Rule 55.3, Setting and Sheeted Sails: Use of Outriggers~~

~~Rule 55.3, Setting and Sheeted Sails: Use of Outriggers~~

No part of a crew's body is a "device."~~an outrigger or fitting.~~

#### **Facts and Decision of the Protest Committee**

*Santana 125* protested *Santana 51* for breaking rule ~~50.3~~, in that a crew member held the jib sheet outboard of the hull with her foot. The protest committee, after finding that the crew was pressing the jib sheet down and outboard of the hull of the boat with her foot while the boat was on a reach, disqualified *Santana 51*, who appealed.

#### **Decision of the Appeals Committee**

By the use of the term "fitting or other device" in defining an outrigger, rule ~~50.3~~ ~~55.3~~ ~~55.3~~ excludes any part of a person's body. *Santana 51*'s appeal is upheld, the decision of the protest committee is reversed, and *Santana 51* is reinstated in her finishing place.

May 1969

Revised January 2021, to conform to changes in rule 55.3

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### **APPEAL 24**

*Sunfish 14863 vs. Sunfish 9605*

**Rule 14, Avoiding Contact**

**Rule 15, Acquiring Right of Way**

**Rule 19.2, Room to Pass an Obstruction: Giving Room at an Obstruction**

**Rule 20, Room to Tack at an Obstruction**

*When PL and PW are approaching an obstruction, and when rule 20 applies, the decision as to whether PL will pass astern of the obstruction or tack is PL's to make. If PL decides to tack she must hail and, after her hail, give PW time to respond.*

[ diagram ]

#### **Facts and Decision of the Protest Committee**

*Sunfish 14863* (PW), after crossing ahead of *Sunfish 9605* (PL), tacked to port and established an overlap on PL to windward. Neither PW nor PL was able to cross *Sunfish 8118* (S), rapidly converging on starboard tack. PW hailed for room to go below S and began to bear away. PL, not hearing the hail and only just aware of PW on her windward side, hailed loudly for room to tack and put her helm down

immediately. Shortly thereafter, PL and PW collided, barely avoiding contact with S. There was no damage or injury.

PL testified that by the time she became aware of PW bearing away on port tack, PL was too close to S to bear away and take her stern. Her only option was to tack. PL protested PW ~~for breaking under~~ rule 15 for tacking too close to permit her to keep clear.

PW protested PL ~~for breaking under~~ rule 20.2(a) for not giving her time to respond before tacking. In addition, PW felt that, having properly established her overlap, she was entitled to room under rule 19.2(b) in order to pass astern of S. The protest committee disqualified PL for breaking rule 20.2(a) and dismissed the protest against PW.

The protest committee requested confirmation or correction of its decision from the appeals committee under rule 70.2 (Appeals and Requests to a National Authority).

#### **Decision of the Appeals Committee**

Rule 15 applies only when a boat tacking acquires right of way over another boat. Since PW tacked to windward of PL, she did not acquire right of way; therefore rule 15 did not apply.

When the contact between PL and PW occurred, PL had just turned past head to wind and, therefore, PW had right of way under rule 13 (While Tacking). However, because PL changed course so abruptly, it was not reasonably possible for PW to avoid the collision. Therefore PW did not break rule 14. PL could have hailed for room to tack earlier than she did and, if she had done so, it would have been possible for her to have avoided the contact. Therefore PL broke rule 14.

PW established an ~~inside~~ overlap on PL when the two boats were several lengths from the obstruction. However, this fact alone did not give PW ~~the~~ right to room under rule 19.2(b). Rule 19.2(a) gave PL, as the right-of-way boat at positions 2 and 3, the right to choose to pass the obstruction on either side. Therefore, PL was under no obligation to give PW room to pass astern of the obstruction if in fact PL desired to tack.

**Commented [D11]:** Not sure we should call it an "inside" overlap – too soon for that

Although PL was entitled under rule 20.1 to call for room to tack to clear the obstruction, rule 20.2(a) specifically provides that a boat hailing for room shall give the hailed boat time to respond. The fact that PL was not aware of PW bearing away until it was too late does not absolve PL of her ~~duty obligation, after she hailed for room to tack, to give PW time to respond (see rule 20.2(a)). to hail before tacking and then tack.~~

The decision of the protest committee disqualifying PL is confirmed.

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*October 1969*

*Revised January 2021, to clarify PL's obligation to give PW time to respond*

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## QUESTION 25

*Interpretation Requested by the New York Yacht Club*

### **Rule 42.1, Propulsion: Basic Rule**

*Using double rudders in opposition to decrease speed does not break rule 42.*

#### **Question**

It is not unusual to construct boats with two rudders. One common configuration is one rudder on the keel (often called a trim tab) and the principal rudder farther aft. Another common configuration is two rudders side-by-side (such as on multi-hulls and scows). When turned in opposite directions, the two rudders have a braking effect. Does this use of the rudders break rule 42?

#### **Answer**

No. Rule 42.1 requires a boat to compete “by using only the wind and water to increase, maintain or decrease her speed.” Thus, the question is whether the use of opposed rudders to decrease speed contravenes that requirement.

Sails are intended to transmit power from the wind to give a vessel forward speed. From the earliest days of square riggers, they have also been backed to stop forward motion. Rudders are intended to transmit power from the flow of water to change the direction of the boat. In the process, drag is increased, and the boat is slowed.

Using opposed rudders to slow a boat departs from regular use only in degree and purpose. It is comparable to backing sails. Such use to slow a boat is not a breach of rule 42.

*May 1970*

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## APPEAL 26

*Race Committee vs. Y-Flyer 1931*

### **Definitions, Racing**

#### **Rule 31, Touching a Mark**

*A boat cannot be penalized for touching a finishing mark when she is no longer racing.*

[ diagram ]

#### **Facts and Decision of the Protest Committee**

*Y-Flyer 1931*, with a moderate breeze behind her and a strong current against her, crossed and cleared the middle of the finishing line. As she started to leave the finishing area by sailing around the finishing mark, the current caused her to touch the mark. She did not take any penalty for touching the mark.

The race committee protested her for breaking rule 31 by touching a finishing mark after finishing. The protest committee disqualified her. She appealed.

#### **Decision of the Appeals Committee**

*Y-Flyer 1931* was incorrectly disqualified ~~for breaking under~~ rule 31 ~~by~~ touching a finishing mark. That rule applied only while she was racing. The definition Racing states, “A boat is *racing* from her preparatory signal until she *finishes* and clears the finishing line and ~~marks...~~”

The diagram shows that *Y-Flyer 1931* finished six hull lengths away from the mark that she subsequently touched. At position 2 she had cleared the finishing line. Also, at position 2 she was well clear of both finishing marks, and neither mark’s position was influencing her choice of course. Therefore, beyond position 2 she was no longer racing and rule 31 no longer applied. See Case 127. *Y-Flyer 1931*’s appeal is upheld, the decision of the protest committee is reversed, and *Y-Flyer 1931* is reinstated in her finishing place.

August 1970

Revised January 2017

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### **APPEAL 27**

*Siren Song vs. Malba*

#### **Rule 10, On Opposite Tacks**

*A hail to hold course is not binding on a right-of-way boat.*

[ diagram ]

#### **Facts and Decision of the Protest Committee**

*Siren Song* (S) and *Malba* (P) were approaching the finishing line, close-hauled on opposite tacks. The finishing line was approximately parallel to S’s course. P’s course, at right angles to the line, would cross it at two to three hull lengths from its starboard and much-favored end.

S hailed “Starboard tack,” and P, believing that she could cross S, hailed “Hold your course.” S, however, tacked and protested ~~for breaking under~~ rule 10. P crossed the line first; S crossed second and overlapped.

The protest committee disqualified P ~~for breaking under~~ rule 10, ~~its belief being that, since it was one helmsman’s judgment against the other’s, the obligated port-tack boat needed adequate evidence to support her claim that she would have cleared S.~~ P appealed, since continuous sightings indicated that she would pass clear ahead but close to S, and she had therefore hailed “Hold your course,” which S had failed to do.

#### **Decision of the Appeals Committee**

The diagram endorsed by the protest committee shows that, if P and S were sailing at the same speed and held their courses after position 1, S's bow would have struck P's starboard side just aft of amidships. When S began to change course to tack, S's bow was about one length from P's starboard side. A competent, but not necessarily expert, sailor in that position would "need to take avoiding action." Therefore, at that moment P broke rule 10 (see the definition Keep Clear).

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~~The facts found by the protest committee are not conclusive as to whether or not a collision would have resulted, had S not tacked. Yet it is clear that the boats were sailing courses that might have resulted in a collision. Even the testimony of P did not satisfy the committee that she would have crossed clear ahead, had S held her course.~~

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P's appeal is denied, the decision of the protest committee is upheld, and P remains disqualified.

In response to the questions regarding a boat that has been hailed to hold course, it is permissible to hail, but the rules do not recognize such a hail as binding on the other boat. S can tack or bear away at any time she is satisfied that a change of course will be necessary to avoid a collision.

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*October 1970*

*Revised January 2021, to support the protest committee's decision to disqualify P*

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## APPEAL 30

*E Scow S-3 vs. E Scow S-7*

### **Rule 18.2(c), Mark-Room: Giving Mark-Room**

*Establishing a late overlap breaks no rule, so long as the boat doing so gives mark-room.*

[ diagram ]

### **Facts and Decision of the Protest Committee**

Boats S-3 (M) and O approached the leeward mark, to be left to port, both on starboard tack and overlapped. S-7 (B) was overtaking from clear astern. Both M and O hailed B that she had no overlap, with which B agreed. The wind was light and erratic, and there was a strong current opposed to the wind.

M maintained course until she was about one-half a hull length beyond the mark and gybed to round it. O did the same. Before M gybed, B, with clear air, overtook and overlapped M on the inside. B intended to round in the room left by M, if it remained open.

When M bore away and gybed and found B overlapped inside, she hailed B that she had no right to mark-room. B promptly bore away and gybed, going to the wrong side of the mark. She made no contact with either the mark or M. She then tacked, gybed once more, and rounded the mark behind O. M, after bearing away and gybing, hit the mark while rounding.

B protested M for touching the mark. M protested B, claiming that B had improperly established an inside overlap that interfered with her rounding of the mark. At the hearing, M said that she was forced to change her course after gybing to avoid a collision with B. The protest committee disqualified B for breaking rule 18.2(c). B appealed the decision, on the grounds that the rule had not been interpreted properly.

#### **Decision of the Appeals Committee**

Rule 18.2(b) says that the boat clear astern must give mark-room after a boat clear ahead reaches the zone. A boat may establish an overlap beyond that point, however, and it is not uncommon for that to happen. Rule 18.2(c)(1) requires such a boat to continue giving mark-room and rule 18.2(c)(2) requires such a boat to give the other boat "room to sail her proper course while they remain overlapped." ~~If~~ if she does, she does not break either rule 18.2(b) or 18.2(c).

In this case, B luffed and passed the mark on the wrong side. M was able to bear off and round the mark. The diagram shows that B gybed and luffed onto a close-hauled course that was well to windward of M's proper course, with the mark between them. Therefore, These facts, coupled with the absence of contact between the boats, warrant the conclusion that B fulfilled her obligations under rules 18.2(b) and 18.2(c) to give M mark-room.

B's appeal is upheld, the decision of the protest committee is reversed. B is reinstated in her finishing place and M is disqualified for breaking rule 31.

*February 1971*

*Revised January 2021-17, to clarify the application of the rules*

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## **APPEAL 31**

*Thistle 2690 vs. Thistle 635*

~~**Rule 50, Setting and Sheeting Sails**~~

~~**Rule 55, Setting and Sheeting Sails**~~

~~**Rule 55, Setting and Sheeting Sails**~~

*A paddle used to support the midsection of a spinnaker is not an outrigger.*

#### **Facts and Decision of the Protest Committee**

In very light air on a broad-reaching leg of the course, a crew member of *Thistle 635*, from his station aft of the mast, supported the midsection of the spinnaker with a paddle. The paddle did not extend beyond the hull. *Thistle 2690* protested *Thistle*

~~635 for breaking under rules 55.2 and 55.3-50.2-55.2 (Setting and Sheetting Sails; Spinnaker Poles; Whisker Poles) and 50.3-55.3 (Sheetting Sails), claiming that the paddle constituted an outrigger or a spinnaker pole unattached to the mast or a device prohibited by rule 55.3.~~

The protest committee dismissed the protest, stating that the practice did not fall within the prohibitions of either rule or those of any other rule. *Thistle 2690* appealed.

#### **Decision of the Appeals Committee**

Rule ~~55.2 50.2 55.2~~ deals with spinnaker poles; the paddle in this case was not a spinnaker pole.

~~Rule 55.3 prohibits sheeting a sail “over or through any device that exerts outward pressure on a sheet or clew of a sail at a point from which, with the boat upright, a vertical line would fall outside the hull or deck.” Since the sheet or clew were not lead through or over the paddle, the paddle did not exert outward pressure on the sheet or clew. Furthermore, the pressure was not applied outside the hull or deck. Therefore, the manner in which the paddle was used did not break rule 55.3.~~

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~~Rule 50.3 55.3 deals with sheeting sails at points outside of a vertical line from the hull (or deck planking) of a boat when upright. Since the paddle did not extend beyond that (vertical) line, the manner in which it was used did not break rule 50.3 55.3.~~

*Thistle 2690*'s appeal is denied, and the decision of the protest committee is upheld.

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*October 1971*

*Revised January 2021, to conform to the changes in new rule 55.3*

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### **QUESTION 33**

*Interpretation Requested by the Noroton Yacht Club*

#### **Rule 16.1, Changing Course**

#### **Rule 16.2, Changing Course**

*To change course means to change the direction in which the boat is heading or moving.*

#### **Questions**

What is the meaning of “change course” in rules 16.1 and 16.2? Is it a change of course for a boat to sail an arc of a circle? If she does not move her helm in doing so, is she nonetheless changing course?

#### **Answers**

~~Yes, a~~A boat changes course when she sails the arc of a circle or any other course where she changes direction, whether or not she moves her helm. This includes a change from moving forward to moving backward, or vice-versa. To change course means to change the direction in which the boat is heading or moving.

*November 1974*

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### APPEAL 34

*My Way and Moxie vs. Crescent 15 and others*

#### **Rule 90.2, Race Committee; Sailing Instructions; Scoring: Sailing Instructions**

*Misinterpretation of sailing instructions when their intent is clear does not mean they are ambiguous.*

#### **Facts and Decision of the Protest Committee**

Member clubs of the association run races under common sailing instructions issued by the association. Some of the races are for a large number of classes sailing in the same course area, in which some classes sail only once around the course while others sail twice around. The race committee of the sponsoring club sets up the starting and finishing line in the middle of a windward leg. It then establishes a quadrilateral restricted and starting area, the four corners of which are marked by the committee boat, starting and finishing line mark C, and two green flags on the leeward side of the line.

Regarding this area and the line, the sailing instructions read:

Restricted Area: All boats must keep clear of the indicated restricted area and of the first leg of the course until after the preparatory signal for their class. Any boat violating the restricted area shall be subject to disqualification.

C Start: All classes start between RC flag on the committee boat and starting line mark C.

All classes in starts 17 through 24, for the second time around, shall not enter the restricted or starting area.

In a regatta, five Crescent class boats which were in starts 17 through 24, sailed through the restricted or starting area on the second time around and were protested by *My Way and Moxie*. The protest committee denied the protests, on the grounds that "the blue flag was up for the finish line; therefore it no longer was a starting line, and there was no restricted area." *My Way* and *Moxie* appealed.

#### **Decision of the Association Appeals Committee**

The association appeals committee upheld the decision. It recognized that it was the race committee's intention to prevent the twice-around boats from entering the restricted area on their second time around. Its opinion, however, was that the sailing

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instructions did not make this clear beyond reasonable doubt. This decision was appealed.

### **Decision of the Appeals Committee**

The question is a simple one. Were the sailing instructions sufficiently clear as to when the restricted area was to be avoided? Was it always “restricted” on the second time around, or only sometimes? It is difficult to see what purpose the race committee would have other than that the prohibition was to apply to all second times around.

Appeals have supported contestants when sailing instructions were unclear or conflicting. In this case, however, any interpretation regarding the restricted area, other than that boats must keep out of the area on their second time around, stretches language beyond common usage and is clearly contrary to the intent of the sailing instructions.

The appeal is upheld, and the decisions of the association appeals committee and the protest committee are reversed. Those boats that started in starts 17 through 24 and sailed through the restricted area on their second lap are disqualified.

*October 1975*

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## **APPEAL 35**

*Reliant vs. Taveuni*

**Rule 13, While Tacking**

**Rule 14, Avoiding Contact**

**Rule 16.1, Changing Course**

~~**Rule 16.2, Changing Course**~~

~~**Rule 43.1(a), Exoneration**~~

~~**Rule 43.1(b), Exoneration**~~

~~**Rule 64.2, Decisions: Penalties**~~

~~**Rule 64.1, Decisions: Penalties and Exoneration**~~

~~**Rule 64.2, Decisions: Penalties**~~

*A boat that completes a tack onto starboard need not thereafter remain close-hauled, but is subject to rules 16.1 ~~and 16.2~~ as she changes course.*

[ ~~Revised~~ diagram ]

### **Facts and Decision of the Protest Committee**

*Taveuni* (A), a 42-foot cutter carrying only a headsail, and *Reliant* (B), a Cal-29 carrying a small jib and reefed mainsail, were on a close reach toward a mark to be left to port. The wind was 35 knots, gusting to 45. ~~Boat~~ A was ahead by 3 to 6 hull

lengths and on a course slightly to leeward of B's. She sailed on until the mark was off her port quarter, tacked to starboard and bore off continuously until reaching position 2, then hardened up to the course shown in position 3.

When A reached position 2, the boats were on a collision course, nearly head on, so B tacked immediately to avoid the impending collision. Before B reached a close-hauled course, A struck B on her starboard side three times between the forward end of the cockpit and the transom. The two boats were then nearly at right angles to each other. B sustained major hull damage and was forced to withdraw.

A protested ~~B for breaking~~ rule 13. B protested ~~A for breaking~~ rule 11 (On the Same Tack, Overlapped).

The protest committee found that A had completed her tack and was on a new course, causing a port-starboard crossing situation under rule 10 (On Opposite Tacks), requiring B to keep clear. B chose to tack but could not avoid a collision. Accordingly, the committee disqualified B for breaking rules 10 and 13. It held that rule 11 was not applicable and dismissed B's protest against A. B appealed.

#### **Decision of the Association Appeals Committee**

The association appeals committee upheld the protest committee's decision, but observed that A did not hold her course during B's tack. A had claimed in her protest that B tacked inside of A and was in irons on starboard tack dead ahead when A luffed to fetch the mark, whereupon the collision occurred. However, the association appeals committee, relying on the fact that neither B nor the protest committee had protested A for breaking rule 16.1, took no further action. B appealed again.

#### **Decision of the Appeals Committee**

~~B had argued in her appeal that A broke rule 13 in that, while tacking, she bore away to a reach and had not yet luffed to close-hauled when the collision occurred.~~ The protest committee, having found that A had met her obligations under rule 13 (she kept clear until she had borne away to a close-hauled course), acted correctly in not disqualifying her for breaking rule 13. ~~B had argued in her appeal that A broke rule 13 in that, while tacking, she bore away to a reach and had not yet luffed to close-hauled when the collision occurred.~~

Rule 13 requires a boat that is tacking to keep clear until she has borne away to a close-hauled course. In this case, A reached, passed, and fell off below close-hauled to a point where she was heading 130 or more degrees off the wind, thus well beyond a close-hauled course. A had the right to sail below close-hauled after tacking.

However, when A became the right-of-way starboard-tack boat and bore away to a collision course with B, she thereby forced B, a port-tack boat, ~~to tack to keep clear, that was keeping clear, to immediately change course to continue keeping clear. A therefore broke rule 16.2, which applied because when A became the right-of-way boat under rule 10, B was sailing to pass astern of her. Almost immediately afterward, Between positions 2 and 3, while B was still subject to rule 13, A also~~

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broke rule 16.1 by luffing to a new collision course with B, making it impossible for B to keep clear.

The association appeals committee erred in failing to consider whether A broke rule 16.1, ~~16.2 or both~~ during her course changes. That B did not protest A for breaking under rule 16.1 or 16.2 was immaterial, and A should have been disqualified, in compliance with rule ~~64.2, 64.1 64.2~~, which provides that a “penalty shall be imposed whether or not the applicable rule was mentioned in the protest.” B broke rule 13, but she was ~~is~~ exonerated for that breach by both rule 43.1(a) and 43.1(b), under rule 21(a) 43.1(b) (Exoneration). Concerning rule 14, B did not break it because it was not reasonably possible for her to have avoided the contact, complied with it by tacking to avoid A. However, A broke rule 14 by failing to avoid contact when it was reasonably possible to do so.

B’s appeal is upheld. The decisions of the association appeals committee and the protest committee are changed. B is reinstated in her finishing place, and A is disqualified for breaking rules 14 and, 16.1, ~~and 16.2~~.

January 1976

Revised January 2021, to clarify the application of the rules including the new exoneration rules

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## APPEAL 36

*Thistle 1155 vs. Thistle 3221*

**Definitions, Obstruction**

**Definitions, Rule**

**Rule 12, On the Same Tack, Not Overlapped**

**Rule 14, Avoiding Contact**

**Rule 15, Acquiring Right of Way**

**Rule 19.2(b), Room to Pass an Obstruction: Giving Room at an Obstruction**

**Rule 43.1(a), Exoneration**

**Rule 43.1(b), Exoneration**

**Rule 21(a), Exoneration**

**Rule 64.1(a), Decisions: Penalties and Exoneration**

*When three boats are on the same tack, a boat clear ahead of the other two is an obstruction to them. If the boats clear astern are overlapped and about to pass the boat clear ahead, the outside boat must give the inside boat room to pass between herself and the boat clear ahead.*

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[ diagram ]

### **Facts and Decision of the Protest Committee**

*Thistle 1155* (W) was sailing slowly up to the starting line, slightly above close-hauled. *Thistle 3221* (M) and *Thistle 3229* (L) were approaching the line from clear astern of W, sailing about three times as fast, and were overlapped for several hull lengths before reaching W. L was holding a steady course, while M, reaching on a collision course with L, luffed to keep clear of her as they converged. Very soon after M and L became overlapped with W, there were collisions with no damage or injury. M hit W and then L a second later.

M protested L and W protested M. The protest committee decided that the two protests were relevant to a single incident and heard both protests in a single hearing. The protest committee found that M broke rule 15 with respect to W, and rule 11 (On the Same Tack, Overlapped) with respect to L. The committee imposed a percentage penalty as provided in the sailing instructions. M appealed.

### **Decision of the Appeals Committee**

The facts describe one incident, so it was appropriate for the protest committee to hear both protests in a single hearing ([see rule 63.2, Time and Place of the Hearing; Time for the Parties to Prepare](#)).

While M and L were clear astern of W, rule 12 required each of them to keep clear of W; therefore W was an obstruction to them (see the definition Obstruction). Because L and M were overlapped, rule 11 required M to keep clear of L. Since L was sailing a course to pass to leeward of W, L (the outside boat) was required by rule 19.2(b) to give M (the inside boat) room between her and the obstruction (W). The room L was required to give M included the space M needed to comply with her Part 2 obligations (see the definition Room).

When M became overlapped to leeward of W, the applicable rules changed. Even though L's bow was well behind W's stern, the overlap between L and W began at that time because M was between and overlapped with both of them (see the definition Clear Astern and Clear Ahead; Overlap). Rule 12 no longer applied, and rule 11 required W to keep clear of M and L. W was no longer a right-of-way boat ~~and therefore no longer~~ an obstruction to L and M; therefore, L was no longer required by rule 19.2(b) to give M room between herself and W. Rule 15 required L and M to initially give W room to keep clear, and since both M and W were required to keep clear of L, L became an obstruction to M and W.

Just before M and L became overlapped with W, L failed to give M room between her and W as required by rule 19.2(b), as shown by the rules breaches and contact that occurred shortly after the overlap was established. As a result of L's breach of rule 19.2(b), there was not space for M to give W room to keep clear after she became overlapped with W, as she was required to do by rule 15.

At the time M and W made contact, the overlap between them had only been in existence for about one or, at most, two seconds. W broke rule 11 by failing to keep clear of M. However, from the time the overlap began, W was entitled to room from

M and L to keep clear of M under rule 15. That room was the space that W needed “while maneuvering promptly in a seaman-like way.” Although W was sailing in the space she needed to try to keep clear of M, M failed to give her enough space and time to maneuver promptly and keep clear of M. Therefore W was sailing “within the room to which she was entitled” under rule 15, and is exonerated ~~by~~under rule 21(a) 43.1(b) 43.1(b) for breaking rule 11. Furthermore, it was not possible for W to keep clear after M established the overlap. Therefore, W was exonerated by rule 43.1(a) for breaking rule 11 because she was compelled to do so by the breach of rule 15 by M and L.

~~M failed to keep clear of L under rule 11. M was required to keep clear of L by rule 11. However, at the time M broke rule 11, rule 19.2(b) required L to give M room between L and W. M was entitled to room between L and W under rule 19.2(b) from L.~~ Since M was sailing within the room to which she was entitled when she broke rules 11 and 15, and because L compelled M to break those rules, M ~~was~~ is exonerated for both those breaches under both rule ~~21(a) 43.1(b).~~ 43.1(a) and 43.1(b).

L failed to give W room to keep clear as required by rule 15, by failing to bear away and allowing M to meet her obligation under rule 15 to provide the space W needed to keep clear of her (see the definition Room). No rule exonerates L for breaking rules 15 and 19.2(b).

~~After~~When L and M became overlapped with W, rule 19.2(b) required W (the outside boat) to give M (the inside boat) room between her and L, unless she had been unable to do so from the time the overlap began (see rule 19.2(b)). W was in fact unable to give such room, because there was very little time between M’s becoming overlapped and then making contact with W. Therefore, W did not break rule 19.2(b).

Concerning rule 14, when it became clear to L that M could not avoid contact with her, L could have avoided the contact by bearing away a few degrees; therefore, L broke rule 14. However, because the contact caused no damage or injury, L ~~was~~is exonerated by rule 43.1(c) (Exoneration) under rule 14(b) 43.1(c) for breaking rule 14. Since it was not reasonably possible for M or W to avoid the contact, they did not break rule 14.

M’s appeal is upheld, and the decision of the protest committee is reversed. M is reinstated in her finishing position, and a percentage penalty is imposed on L as provided in the sailing instructions. See Case 117.

*October 1976*

*Revised January 2021~~17~~, to clarify the application of the rules including the new exoneration rules*

*Sunfish 21681 Request for Redress*

**Definitions, Conflict of Interest**

**Rule 3, Decision to Race**

**Rule 3, Decision to Race**

**Rule 4, Decision to Race**

**Rule 62.1(a), Redress**

**US Sailing Prescription to Rule 63.1, Hearings: Requirement for a Hearing**

**Rule 63.4, Hearings: Conflict of Interest**

*The responsibility for a boat's decision to participate in a race or to continue racing is hers alone. If she does not start and is scored accordingly, she cannot receive redress by claiming that the race committee acted improperly in deciding to conduct the race in conditions it considered to be suitable. Protest committee members who believe they have a close personal interest in a decision concerning their actions as race committee members act properly when they decline to take part in the hearing.*

**Facts and Decision of the Protest Committee**

In a race of a Sunfish regatta, 17 out of 21 starters finished. Winds were 15 to 20 knots with seas at one to two feet. Before the start, *Sunfish 21681* hailed the race committee that she was protesting the committee for allowing the race to begin, and she then left the racing area.

She requested redress, claiming that the race committee significantly worsened the scores of boats by starting the race under the existing conditions and thus jeopardizing their safety. The members of the protest committee, who were also members of the race committee, believed that they all had significant conflicts of interest and thus precluded by rule 63.4 from deciding the request for redress, and so postponed a hearing until a new protest committee could be convened.

The new protest committee dismissed the request for redress on the grounds that rule ~~3-4-3~~ makes the responsibility for a boat's decision to participate or continue in a race "hers alone." It also said that a decision by a boat not to participate does not put the race committee in the position of having acted improperly. *Sunfish 21681* appealed.

**Decision of the Appeals Committee**

The decision to start, postpone, or abandon a race is a matter solely within the jurisdiction of the race committee (see rule 90.1). The new protest committee was correct in stating that rule ~~34-3~~ makes each boat solely responsible for deciding whether or not to race or continue racing. The appellant was free to decide not to participate, so there is no basis for her claim that her score DNS ("Did not start") had been made significantly worse by an "improper action" of the race committee (see rule 62.1(a)).

A member of the race committee may be a member of the protest committee, provided he or she is not ineligible under the US Sailing prescription to rule 63.14.

However, under rule 63.4, no member of the protest committee can have a significant conflict of interest. In this case, the original protest committee's judgment that its members had a significant conflict of interest was sound. Under the definition Conflict of Interest, a protest committee member who has "a close personal interest" in the protest committee's decision has a conflict of interest. Here, it was alleged that the race committee members acted so as to expose competitors to unsafe conditions. They inevitably would have had a close personal interest in whether or not that allegation would be determined to be valid. As protest committee members, they therefore were correct in acting under rule 63.4 to decline to take part in the hearing.

*Sunfish 21681's* appeal is denied, and the decision of the protest committee denying her request for redress is upheld. *Sunfish 21681* remains scored DNS.

January 1978

Revised January 20~~17~~<sup>17</sup>

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## APPEAL 40

*Blue Jay 6038 Request for Redress*

### **Rule 90.2(c), Race Committee; Sailing Instructions; Scoring; Sailing Instructions**

*Changes to sailing instructions, when made ashore, must be in writing and posted on time on the official notice board.*

#### **Facts and Decision of the Protest Committee**

The sailing instructions for the high school championship included provisions for courses, for a common starting and finishing line, and for superseding written instructions by oral instructions upon display of flag L. There was a time provided for a ~~competitors~~skippers' meeting and also this provision: "Marks: Temporary marks will be used. Placement of marks will be discussed at ~~competitors~~skippers' meeting."

At the ~~competitors~~skippers' meeting, the race committee changed the course and line instructions, stating that there would be two lines, a starting line to port of the committee boat and a finishing line to starboard, each with a different colored mark at the outer end. On the fourth leg (second windward leg), all boats were to sail through the finishing line. By so doing, if it became necessary to shorten course, the boats would already be heading for the finishing line.

On the fourth leg of the first race, *Blue Jay 6038*, the appellant, who was leading her class, sailed through the starting line instead of the finishing line. She was disqualified.

She requested redress under rule 62 (Redress), on the grounds that “there was nothing in the sailing instructions requiring boats to pass through the finishing gate” and that she had been penalized without a hearing. When the protest committee upheld the race committee’s decision, she appealed, citing improper procedure under rule 90.2(c).

### **Decision of the Association Appeals Committee**

The association appeals committee reversed the protest committee’s decision and reinstated *Blue Jay 6038*, observing that there was nothing in the sailing instructions about a finishing line, separate and distinct from the starting line, through which boats were to pass on the fourth leg of the race. Moreover, whatever “incidental discussion” there may have been at the competitors/skippers’ meeting was inadequate, “according to any of the facts found,” to comply with rule 90.2(c). The confusion caused by the written sailing instructions, the indefinite oral instructions on passing through a finish “gate,” and the committee’s action in setting two “gates” created such ambiguity that *Blue Jay 6038* should have been given the benefit of the doubt and reinstated as a finisher. The appeal was upheld, and the race committee appealed.

### **Decision of the Appeals Committee**

The basic question raised by this appeal arises from oral changes to the sailing instructions. Rule 90.2(c) reads: “Changes to the sailing instructions shall be in writing and posted on the official notice board...or, on the water, communicated to each boat... . Oral changes may be given only on the water... .”

The sailing instructions provided only for a single line that was to serve as both a starting and finishing line. They were devoid of any requirement that the line be passed through on any leg of the course.

This was all changed orally at the competitors/skippers’ meeting. Two lines were substituted for one line, and a requirement that the boats pass through the finishing line on the second windward leg was added. The changes to the sailing instructions should have been in writing and posted on the official notice board as required by rule 90.2(c). While requiring attendance at competitors’ meetings is permissible and such meetings provide a forum for answering questions, meetings such as these ~~While skippers’ meetings are desirable and provide a forum for answering questions, such meetings~~ are not a substitute for the sailing instructions, even when all skippers are present. The purpose of requiring that a change in the sailing instructions be made in writing is to prevent the kind of confusion that occurred in this case.

A notice of a meeting or a notice that oral instructions will be given does not comply with the requirement of rule 90.2(c). Note that rule 90.2(c) cannot be changed (see rule 86.1(b)). Oral instructions are valid only when given on the water in the manner provided for in that rule and the sailing instructions.

The race committee’s appeal is denied, and the decision of the association appeals committee is upheld. The decision of the protest committee is reversed, and *Blue Jay 6038* is reinstated in her finishing place.

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April 1979

Revised January 2021, to clarify rule 90.2(c)

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## APPEAL 41

*Nirie V Request for Redress*

### **Rule 61.3, Protest Requirements: Protest Time Limit**

*Competitors are entitled to reasonable means to fulfill whatever time requirements there are for delivering a protest. The protest committee must extend the time if there is good reason to do so.*

### **Facts and Decision of the Protest Committee**

After finishing her race, *Nirie V* reached the dock in about an hour. Her skipper promptly filled out a protest form and then spent the next two hours searching for someone to whom he could deliver it. Finally, one member of the race committee appeared and was given the protest.

The protest committee closed the hearing under rule 63.5 (Validity of the Protest), because the protest was delivered after the two-hour time limit prescribed by rule 61.3. *Nirie V* appealed on the grounds that she had made a timely and extended effort to deliver her protest, and the absence of any member of the race committee entitled her to an extension of the time limit.

### **Decision of the Appeals Committee**

Competitors are entitled to reasonable means to comply with the time limit for delivering protests. When, as in this case, such means are not available and when the protestor has delivered her protest as soon as the means was provided, there is good reason to extend the time limit and the protest committee is required by rule 61.3 to do so.

*Nirie V*'s appeal is upheld, and the decision of the protest committee to close the hearing is reversed. The protest is returned to the protest committee to continue the hearing.

December 1978

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## APPEAL 42

*Super Sunfish 238 and others vs. Super Sunfish 648*

### **Definitions, Conflict of Interest**

#### **Rule 2, Fair Sailing**

#### **Rule 60.1(a), Right to Protest; Right to Request Redress or Rule 69 Action**

**Rule 63.4, Hearings: Conflict of Interest**

**Rule 91, Protest Committee**

*It is not contrary to recognized principles of sportsmanship and fair sailing for several boats to consult about a protest and then deliver multiple protests or a joint protest. The rules do not prohibit protest committees of one person. A protest committee member does not have a conflict of interest because of being the measurer.*

**Facts and Decision of the Protest Committee**

*Super Sunfish 648* was protested by three others for sailing the first two races with an illegal daggerboard.

The protest hearing was conducted by a single member of the race committee, who was also acting class measurer.

The judge upheld the protest and penalized *Super Sunfish 648* twenty percent under the provisions of the sailing instructions.

*Super Sunfish 648* appealed on three grounds: first, that the three protestors were in collusion and thus had broken rule 2; second, that one person does not constitute a committee as provided by rules 90.1 (Race Committee) and 91; and third, that the judge was not entitled by rule 63.4 to conduct the hearing because he was also the acting class measurer.

**Decision of the Appeals Committee**

Any boat is entitled to protest any other boat, subject to the provisions of rule 60. If any one boat may do so, three may also do so, and they do not break rule 2 simply because they consult before delivering their protests or because they deliver a joint protest.

Rule 91 does not prohibit a protest committee consisting of one person.

A protest committee member who is also the class measurer does not, for that reason alone, have a conflict of interest, and therefore is not prohibited by rule 63.4 from taking part in a measurement protest.

*Super Sunfish 648's* appeal is denied, and the decision of the protest committee is upheld. *Super Sunfish 648* remains scored with a 20% penalty.

*November 1980*

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**APPEAL 43**

*Floating Prime vs. Hurry Hurry*

**Rule 11, On the Same Tack, Overlapped**

**Rule 14, Avoiding Contact**

## Rule 15, Acquiring Right of Way

*After a leeward boat has established an overlap from clear astern and initially given the windward boat room to keep clear ~~as required by~~ rule 15, the windward boat is correctly disqualified for breaking rule 11 if by luffing she causes contact.*

[ diagram ]

### Facts and Decision of the Protest Committee

*Floating Prime (L) and Hurry Hurry (W) were approaching the starting line shortly before the start. Both were on starboard tack with W close-reaching and sailing slowly. L established an overlap not far to leeward of W from clear astern. The two boats sailed for a few hull lengths on parallel courses, with L moving somewhat faster.*

*When the boats were overlapped eight to ten feet, L hailed her intention to luff. W responded by luffing and tacking. The port corner of her transom made contact with L amidships, without damage or injury, while W was well above close-hauled but not yet head to wind. From the beginning of the overlap until after contact, L held a steady course and did not luff. After contact, W continued her turn and ended on port tack.*

*L protested W ~~for breaking~~ rule 13 (While Tacking) ~~by~~ not keeping clear while tacking. W protested L ~~for breaking~~ rule 15 ~~by~~ failing to give W room to keep clear and rule 17 (On the Same Tack; Proper Course) ~~by~~ sailing above her proper course.*

*The protest committee found that, after the overlap began, W could have kept clear by holding her course, as she did until L hailed, or by luffing slowly. It concluded that although L established her overlap close aboard, it was not so close as to initially deprive W of room to “keep clear” (rule 15). It interpreted “room” to mean enough room to keep clear by some means easily accomplished, not room to execute any maneuver the windward boat might desire.*

*The protest committee disqualified W for breaking rule 11 and dismissed W’s protest. W appealed.*

### Decision of the Appeals Committee

*Rule 17 did not apply because a boat has no proper course before her starting signal.*

*When L established her overlap to leeward from clear astern, she was obligated by rule 15 to initially give W room to keep clear. She did this, since the boats sailed parallel courses for a few hull lengths without contact. A windward boat’s right to “room to keep clear” under rule 15 exists only briefly, at the time the overlap begins. Since contact occurred with no luff by L, and only after W had luffed well above a close-hauled course, L fulfilled her obligation under rule 15 to initially give W room to keep clear, and W was properly disqualified ~~for breaking~~ rule 11.*

*Concerning the contact, it was reasonably possible for W to avoid it but she failed to do so, and therefore broke rule 14. L was unable to avoid the contact, so she did not*

break rule 14. W's appeal is denied. The decision of the protest committee is corrected, and W remains disqualified, but for breaking both rules 11 and 14.

October 1981

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## QUESTION 44

*Interpretation Requested by the Southern California Yachting Association*

### **Rule 62.1(a), Redress**

~~Rule 64.2, Decisions: Decisions on Redress~~

~~Rule 64.3, Decisions: Decisions on Redress~~

~~Rule 64.3, Decisions: Decisions on Redress~~

### **Rule 90.3(c), Race Committee; Sailing Instructions; Scoring: Scoring**

*A race committee that corrects a boat's score based on its own records or observations does not act improperly. The boat therefore has no valid claim for redress.*

#### **Assumed Facts**

In the second race of a series, a boat that was on the course side of the starting line at the starting signal failed to return and start ~~correctly~~. However, the race committee scored her as having finished in second place. It later discovered its error but the corrected results were not posted until two days later. Those results showed her OCS ("Did not ~~start~~ on the course side of the starting line at her starting signal and failed to ~~start~~, or broke rule 30.1"). The boat requested redress under rule 62.1(a), and the protest committee, acting under rule ~~64.3~~~~64.2~~~~64.3~~, decided to reinstate her in second place.

#### **Question 1**

If a race committee errs by scoring a boat incorrectly, is that boat's score made significantly worse within the meaning of rule 62.1(a) when the committee subsequently corrects the score?

#### **Answer 1**

No. When a race committee determines from its own records or observations that it has scored a boat incorrectly, it is required by rule 90.3(c) to correct the error. Accordingly, a race committee does not take an improper action when it corrects an error it has made. Therefore rule 62.1(a) cannot apply.

#### **Question 2**

Did the protest committee make the correct decision under rule ~~64.2~~~~64.2~~~~64.3~~ ~~64.3~~ when it gave the boat redress by scoring her in the place she was originally scored?

#### **Answer 2**

No. Rule ~~64.2~~ ~~64.3~~ 64.3 could not apply because the boat was not eligible for redress.

October 1981

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## APPEAL 45

*Gadzooks vs. Bubba*

**Rule 13, While Tacking**

**Rule 14, Avoiding Contact**

**Rule 20.2~~(a)~~, Room to Tack at an Obstruction: Responding**

*A leeward boat that hails and tacks simultaneously breaks rule 20.2(a). A windward boat is not required to anticipate a leeward boat's actions with respect to a converging right-of-way boat.*

[ diagram ]

### **Facts and Decision of the Protest Committee**

*Gadzooks* (PL) and *Bubba* (PW) were both sailing close-hauled on port tack, PL approximately one hull length ahead and one and a half hull lengths to leeward of PW. S was on starboard tack on a collision course with PL.

PL did not expect a boat coming from where S was sailing and did not become aware of her presence until there was no opportunity to bear away and go astern of S. As soon as she saw S, PL hailed that she was tacking and simultaneously tacked onto starboard. PL hit PW amidships, resulting in substantial damage to both boats. PW protested.

The protest committee found that PW was not able to keep clear of PL without having to begin to change course before PL had borne away to a close-hauled course. Its decision was that PL had no rights under rule 10 (On Opposite Tacks), because she had not satisfied the protest committee that she had complied with rule 13. Also, she broke rule 20.2(a) by hailing and tacking simultaneously. PL was disqualified.

### **Decision of the Association Appeals Committee**

On appeal by PL, the association appeals committee upheld the protest committee's decision. It further found that, even though it was not clear that PW was aware of the presence of S, she should have been prepared to respond as required. Accordingly, it also disqualified PW for breaking rule 20.2~~(a)~~. PW appealed.

### **Decision of the Appeals Committee**

The protest committee was correct in finding that PL had no rights with respect to PW, because she had not kept clear as required by rule 13. Since PL did not give PW time to respond before tacking, she also broke rule 20.2(a).

The association appeals committee's statement that PW should have been prepared to respond is unwarranted. PW was not required to anticipate PL's breach of rules 13 and 20.2(a). **Furthermore, b**By the time it became clear that PL was not keeping clear, it was not reasonably possible for PW to avoid contact; therefore PW did not break rule 14.

PL was at fault both in failing to observe S in time to pass under her stern and in hailing and tacking simultaneously, contrary to rule 20.2(a). She also broke rule 13 by failing to keep clear of PW, and rule 14 by failing to avoid contact when it was reasonably possible for her to have done so.

PW's appeal is upheld, the decision of the association appeals committee disqualifying PW is reversed, and the decision of the protest committee is changed. PW is reinstated in her finishing place, and PL is disqualified for breaking rules 13, 14 and 20.2(a).

March 1982

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## APPEAL 46

3470 vs. 3035

### **Rule 44.1, Penalties at the Time of an Incident: Taking a Penalty**

### **Rule 61.1(a), Protest Requirements: Informing the Protestee**

### **Rule 61.2(b), Protest Requirements: Protest Contents**

*The failure of a boat to take a Two-Turns Penalty does not break a rule. A boat may not be disqualified for an incident not described in a valid protest.*

### **Facts and Decision of the Protest Committee**

At the start of the final beat, two 25-foot boats were on starboard tack with the protestee, 3035 (A), clear ahead by one to one-and-a-half hull lengths. A tacked and 3470 (B) changed course thinking that she needed to do so in order to avoid contact. B displayed her protest flag five minutes after the incident. Just before finishing and 15 minutes after the incident, A took a Two-Turns Penalty. B protested not the right-of-way incident itself but A's failure to take her penalty as soon as possible.

The protest committee was not satisfied that A had complied with rule 13 (While Tacking). It also decided that A had not sailed well clear as soon as possible and taken her Two-Turns Penalty, as required by rule 44.2 (One-Turn and Two-Turns Penalties). It disqualified her for breaking rule 13.

A appealed, principally on the grounds that the protest committee had failed to establish the relative positions of the two boats. She also noted that B did not display a protest flag until five minutes after the incident, and therefore that A was under no obligation to do a Two-Turns Penalty.

### **Decision of the Association Appeals Committee**

The association appeals committee agreed that the relative positions of the boats had not been established, and therefore there was considerable doubt that rule 13 had been broken. The committee upheld A's appeal, reversed the decision of the protest committee, and reinstated A in her finishing place.

B appealed this decision, mainly on the grounds that the association appeals committee had failed to accept the protest committee's finding of facts.

### **Decision of the Appeals Committee**

The protest committee was obligated to decide whether B's protest was valid before considering its content (see rule 63.5, ~~+~~Hearings: Validity of the Protest or Request for Redress~~+~~). If the protested incident had been the right-of-way incident, the protest would have been invalid because B did not display her protest flag until five minutes after the incident. This was not the "first reasonable opportunity" as required by rule 61.1(a).

However, B's protest of A's failure to take a proper and timely Two-Turns Penalty met the requirements of rule 61.1(a), since the incident referred to under rule 61.2(b) was A's failure to take a Two-Turns Penalty when required and B complied with rule 61.1(a) at that time. B's protest was therefore valid.

However, A's failure to take a proper and timely Two-Turns Penalty broke no rule. It meant only that she failed to take a penalty, but her failure to take a penalty had no bearing on the protested incident. Since the right-of-way incident was not the incident described in B's protest, A could not be penalized for that incident.

B's appeal is denied. The decisions of the association appeals committee and the protest committee are changed, and A is reinstated in her finishing place.

October 1982

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## **QUESTION 50**

*Interpretation Requested by the South Atlantic Yacht Racing Association*

### **Rule 90.2(e), Race Committee; Sailing Instructions; Scoring; Sailing Instructions**

~~Requiring attendance at a competitors' meeting does not break a rule. Intended changes in the sailing instructions announced at the competitors' meeting have no effect unless they are in writing and posted within the required time on the official notice board.~~

#### **Question 1**

Does requiring attendance at a competitors' meeting break any rule?

#### **Answer 1**

No.

### **Question 2**

What is the effect of changes to the sailing instructions announced at a competitor's meeting but not posted in writing on the official notice board before the time stated in the sailing instructions?

### **Answer 2**

Rule 90.2(c) requires that changes in the sailing instructions be in writing and posted on the official notice board before the time stated in the sailing instructions. That means any intended changes in the sailing instructions (including additions) announced at a skippers' meeting must be posted within the time required by the sailing instructions. Otherwise, they have no effect. Note that rule 90.2(c) cannot be changed (see rule 86.1(b)).

*October 1984*

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## **APPEAL 51**

*Scimitar vs. Audacious*

**Rule 10, On Opposite Tacks**

**Rule 16.1, Changing Course**

**Rule 64.1(a), Decisions: Penalties and Exoneration**

**Rule 64.2(a), Decisions: Penalties**

*When she cannot see behind other boats, an obligated boat must anticipate what might appear from the other side of the other boats.*

[diagram]

### **Facts and Decision of the Protest Committee**

In 18 to 22 knots of wind and prior to the start, *Audacious* (S) was on starboard tack near the committee boat and behind other starboard tack boats. *Scimitar* (P) was on port tack and reaching below the fleet from the opposite end of the line at more than seven knots. Neither saw the other at this stage.

S bore away sharply about 30 degrees to pass to leeward of *Brigand* (A), which she was overtaking. S had no one stationed on her bow, whereas P did. At approximately four hull lengths separation, P's lookout saw S and yelled to his helmsman to "fall off," which he did slowly. P was 15-25 feet to leeward of the nearest starboard tack boat. S reacted by luffing hard, with the result that her port quarter struck P's hull amidships without causing damage or injury.

The protest committee held that P had no reason to anticipate the action of an unseen starboard tack boat, and S had ample time to adjust her speed to avoid the dilemma

of overtaking A. It then disqualified S for breaking rule 16.1 at position 1. S appealed.

#### **Decision of the Association Appeals Committee**

The association appeals committee held that, as P and S approached each other with several boats between them that prevented them from seeing each other, P had adequate time and space to meet her newly discovered obligation under rule 10. Her action in slowly bearing away was insufficient to avoid collision, thereby requiring S to luff sharply to avoid possible serious damage. It found that the protest committee's decision was not supported by the facts or the diagram, reinstated S in the race, and disqualified P under rules 10 and 14 (Avoiding Contact). P appealed.

#### **Decision of the Appeals Committee**

When S bore away sharply at position 1, prior to which neither boat could see the other, there were more than six hull lengths of open water between her and P. Under those circumstances, the maneuver by S was proper and appropriate and P had the room to keep clear that she was entitled to under rule 16.1. There is no indication in the facts or diagram that, after her initial and abrupt maneuver, S made any other change of course that might have left insufficient room for P to keep clear under rule 10 prior to P breaking rule 10 just before position 2. When it became clear to S that P was not keeping clear, it was not reasonably possible for her to avoid contact with P; therefore S did not break rule 14. Although S's last minute course change at position 2 to avoid a collision as required by rule 14 resulted in S breaking rule 16.1, she was compelled to do so by P's breach of rule 10.

The fact that P was unable to see S until they were on a collision course cannot be used to relieve her of her obligation to the right-of-way boat. The situation is not unlike one in which a port tack boat barely clears a starboard tack boat only to find another starboard tack boat to windward of the one she has just cleared.

When she cannot see behind other boats, the obligated boat must anticipate what might appear from the other side of those boats. S's maneuver was not a dangerous one but, in fact, normal under the circumstances. A keep clear boat, when keeping clear of a group of boats holding right of way, is responsible for anticipating what obligations she is incurring, even though she cannot see all the boats.

P's appeal is denied, and the decision of the association appeals committee is upheld. P remains disqualified and S is exonerated from her breach of rule 16.1 under rule 64.1(a) 64.2(a).

*October 1984*

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## **APPEAL 52**

*Dynamo Hum vs. Holiday V*

**Rule 11, On the Same Tack, Overlapped**

**Rule 14, Avoiding Contact**

**Rule 15, Acquiring Right of Way**

*A starboard-tack boat that gybes and becomes a leeward boat does not thereby acquire right of way. A right-of-way boat failing to avoid contact when it was reasonably possible to do so breaks rule 14.*

[ diagram ]

**Facts and Decision of the Protest Committee**

In 25 knots of wind during a downwind start, *Holiday V* (L), on starboard tack, crossed ahead of *Dynamo Hum* (W), on port tack, by two and one-half hull lengths. Within two hull lengths L gybed to port tack, clear ahead of W, but assuming a higher course so that the boats were converging. W, in the process of hoisting her spinnaker, did not see L's maneuver, and did not appreciably change her course during the incident. Approximately ten seconds after the crossing of the boats there was contact. W's spinnaker struck the shrouds of L and her boom hit L's stanchions, causing considerable damage to W's mast. W protested.

The protest committee found that L made no attempt to avoid contact with W and that in the wind conditions L gybed too close, thereby breaking rule 15. It disqualified her and she appealed.

**Decision of the Association Appeals Committee**

The association appeals committee concluded that when L completed her gybe she was sufficiently clear of W and therefore she did not break rule 15. It disqualified W for failing to keep clear as required by rule 11. W appealed.

**Decision of the Appeals Committee**

Rule 15 did not apply because L held right of way under rule 10 (On Opposite Tacks) before she gybed and after that she continued to hold right of way, first under rule 12 (On the Same Tack, Not Overlapped) and then under rule 11. Rule 16.1 (Changing Course) applied because L was a right-of-way boat changing course, and L gave W room to keep clear. W failed to keep clear as required. However, since both L and W had the opportunity but failed to make any attempt to avoid contact and damage resulted, both are disqualified ~~for breaking under~~ rule 14.

W's appeal is denied. The decisions of the association appeals committee and the protest committee are changed. W remains disqualified, but for breaking rule 14 in addition to rule 11, and L is also disqualified for breaking rule 14.

*March 1986*

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**APPEAL 53**

*Hevn Request for Redress*

**Rule 76.1, Exclusion of Boats or Competitors**

*The organizing authority or the race committee may reject or cancel the entry of a boat so long as it states its reason for doing so and complies with the US Sailing prescription to rule 76.1.*

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### **Facts and Decision of the Protest Committee**

The “Race Instructions for Auxiliary Boats” did not contain any specific eligibility requirements for the Twilight Series, an event for offshore boats, but did require that each boat have a valid PHRF rating certificate and that all boats meet the safety standards of the ~~ISAF World Sailing~~ World Sailing Offshore Special Regulations for a Category 4 race. The race committee rejected the entry of *Hevn*, a modified Etchells 22, stating: “Since our course designations include areas in the Atlantic Ocean and the Race Committee doesn’t feel your craft is an offshore vessel, the Race Committee is rejecting your entry into this series.” *Hevn* requested redress, claiming that the action was discriminatory and that she held a valid PHRF rating and met the requirements of the ~~ISAF World Sailing~~ World Sailing Offshore Special Regulations for a Category 4 race. Neither of these claims was disputed, but the protest committee upheld the decision of the race committee and denied *Hevn*’s request for redress.

*Hevn* appealed, stating that the action was unjust and discriminatory, that she met the requirements of the sailing instructions, and that similar boats had been accepted in other offshore events. She also contended that rule 76.1 requires a “legitimate” reason for rejecting an entry.

### **Decision of the Appeals Committee**

This event was for offshore boats. The race committee concluded that *Hevn* was not an offshore boat in the generally accepted meaning of the term, and therefore was not suitable for the event. In the absence of specific eligibility requirements in the sailing instructions, the committee used rule 76.1 to reject *Hevn*’s entry. In doing so it stated the reason, thereby complying with the rule.

The appellant’s belief that the rule requires a “legitimate” reason is incorrect. Rule 76.1 does not state or imply any qualitative tests for the acceptability of the reason other than that the reason cannot be arbitrary or capricious or based on race, color, religion, national origin, gender, sexual orientation, or age ~~or national origin~~ (see the US Sailing prescription to rule 76.1). A race committee has broad authority to make such judgments as it considers necessary to ensure that a race or regatta is conducted so as to follow the intentions of the organizing authority, as well as the rules governing the event.

*Hevn*’s appeal is denied. The decision of the protest committee is upheld, and *Hevn*’s entry remains rejected.

*September 1986*

*Revised January 2021, to conform to US Sailing prescription to rule 76.1*

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## APPEAL 54

*Shields 28 Request for Redress*

### Definitions, Rule

~~Rule 5, Rules Governing Organizing Authorities and Officials~~

Rule 5, Rules Governing Organizing Authorities and Officials

### Rule 62.1(a), Redress

~~Rule 84, Governing Rules~~

*A race committee is bound by the sailing instructions because they are rules. When a boat's place in a series is made significantly worse by a race committee action which is contrary to a sailing instruction, the boat is entitled to redress.*

### Facts and Decision of the Protest Committee

The sailing instructions provided for written changes, and the race committee correctly posted an earlier starting time for the first race on the last day of the regatta, expecting to be able to hold two races. Although the sailing instructions provided that "No race will be started after 10:00 a.m.," the committee started the final (fifth) race at 10:15 a.m. As a result of the fifth race, the final regatta finishing place of *Shields 28* went from 1st to 2nd. She requested redress under rule 62.1(a). The protest committee dismissed the request, having concluded that the race committee's error did not prejudice the finish of *Shields 28* in that race. *Shields 28* appealed.

### Decision of the Appeals Committee

A race committee's breach or ignoring of a sailing instruction is an improper action or omission, since the sailing instructions are a part of the rules governing a race, regatta or other series. The definition Rule includes the sailing instructions, and rule ~~84-5~~ 5 required the race committee to conform to them in its conduct of the races. By starting the final race of the regatta 15 minutes later than the latest permissible time, and including in the regatta results a race that should not have been held, the score of *Shields 28*'s place in the series was made significantly worse. The words "place in a series" in rule 62.1 cannot be ignored.

*Shields 28*'s appeal is upheld. The decision of the protest committee is reversed, and the regatta is to be rescored omitting the fifth race.

*April 1986*

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## APPEAL 56

*Boat 1 (Interlake Class) Request for Redress*

~~Rule 64.1(b), Decisions: Penalties and Exoneration~~

**Rule 64.2(b), Decisions: Penalties**

**Rule 64.2(a), Decisions: Penalties**

**Rule 70, Appeals and Requests to a National Authority**

**Rule 86.1(b), Changes to the Racing Rules**

*The sailing instructions may change a rule only if permitted to do so in rule 86.1(b). Denying any of the results of a successful appeal is equivalent to denying the right of appeal. A boat that retires in acknowledgment of breaking a rule in an incident thereby takes a penalty, although she may still be protested for her breach. If valid, the protest must be decided. However, no additional penalty may be imposed, unless the penalty for the rule that she broke is a disqualification that may not be excluded from her series score.*

**Facts and Decision of the Protest Committee**

The sailing instructions stated that “all legal protests will be heard regardless of whether either contestant finished;” that “a boat which does not finish or retires scores points equal to one more than the number of finishers” but a boat “disqualified scores points equal to the number of boats registered;” that a disqualification may not be excluded from a boat’s series score; and that a “decision of the protest committee can be appealed; however, there shall be no appeal...as to the awarding of points for the championship.”

*Boat 1* made contact with *Boat 10* and retired from the race in acknowledgment of breaking a rule. *Boat 10* protested *Boat 1*, and the protest committee disqualified *Boat 1*. *Boat 1* requested redress, arguing, among other things, that she had retired and should be scored accordingly. The protest committee denied the request. *Boat 1* appealed.

**Decision of the Appeals Committee**

Rule 86.1(b) does not permit sailing instructions to change rule 70 or Appendix R, which govern appeals. The sailing instruction that stated that an appeal decision would not affect a boat’s score did not comply with rule 86.1(b), because it had the same effect as denying the right of appeal. If a boat retires in acknowledgment of breaking a rule, she thereby takes a penalty and the protest committee is prohibited by rule ~~64.2(a)64.1(b) 64.2(b)~~ from penalizing her further. However, the rules do not prohibit protesting a boat for an incident after which she retires in acknowledgment of breaking a rule. If valid, the protest must be decided, even though the protest committee is prohibited from imposing any additional penalty on the boat that retired, unless the penalty for a rule that she broke is a disqualification that is not excludable from her series score.

*Boat 1*’s appeal is upheld. The decision of the protest committee is reversed, and *Boat 1* is to be scored DNF (“Did not *finish*”). The series results and, if affected, the awarding of prizes are to be changed accordingly.

*August 1987*

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## QUESTION 58

*Interpretation Requested by the Corinthian Yacht Club*

### **Rule 86.3, Changes to the Racing Rules**

*Defines "local races."*

#### **Question**

What is the meaning of "local races" in the prescription to rule 86.3?

#### **Answer**

Local races are those in which normally the same group of people from a limited geographic area regularly race together.

*April 1989*

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## QUESTION 59

*Interpretation Requested by North Sails*

### ~~World Sailing Regulation 20, Advertising Code~~

### ~~World Sailing Advertising Code~~

### World Sailing Advertising Code

*Sailbags and turtles are "equipment," and are subject to the rules of the World Sailing Advertising Code.*

#### **Question 1**

Are sailbags and sail turtles "equipment" for the purposes of ~~World Sailing Regulation Advertising Code Regulation~~ 20.7.1 and Table 2 in the World Sailing Advertising Code?

#### **Answer 1**

Yes. Also see World Sailing ~~Regulation Advertising Code~~ Regulations 20.2.1, 20.7.1 and Regulation 20 Table 2 for the rules pertaining to the quantity, size and location of manufacturer's and sailmaker's marks.

#### **Question 2**

Is advertising on sailbags and sail turtles limited to one maker's mark no longer than 300mm in length on each side of the equipment?

#### **Answer 2**

Yes. However, class rules, notices of race and sailing instructions may, under circumstances stated in ~~World Sailing Regulation 20 Advertising Code (World Sailing Advertising Code)~~, permit additional advertising.

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April 1990

*Revised January 2021, to clarify the World Sailing Regulations that apply*

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## APPEAL 60

*Flying Scot 36 vs. Flying Scot 92*

**Rule 44.1, Penalties at the Time of an Incident: Taking a Penalty**

**Rule 44.2, Penalties at the Time of an Incident: One-Turn and Two-Turns Penalties**

*Rule 44.1 does not provide time for a boat to deliberate whether she has broken a rule. If a boat decides too late that she has broken a rule, the penalty provided by rule 44 is not available to her.*

[ diagram ]

### **Facts and Decision of the Protest Committee**

*Flying Scot 36 (W) and Flying Scot 92 (L), both on starboard tack, made contact three to four hull lengths before rounding the leeward mark. After the contact, each boat hailed protest and displayed a protest flag.*

Each felt that the other boat had broken a rule. Both boats rounded the mark and proceeded on port tack up the windward leg of the course. W, after sailing about three hull lengths, tacked onto starboard and sailed about ten more hull lengths through the balance of the fleet (three or four boats) still on the downwind leg. W then took a Two-Turns Penalty. L protested W, claiming that W had broken rule 11 (On the Same Tack, Overlapped).

The protest committee found that W had broken rules 11 and 14 (Avoiding Contact), and disqualified her because she had not ~~taken a penalty~~~~exonerated herself~~ by following rule 44.2, since she sailed for several minutes before starting her penalty. W appealed.

### **Decision of the Appeals Committee**

Rule 44.1 permits a boat to take a penalty at the time of the incident. Rule 44.2 requires the boat to sail well clear of other boats as soon as possible after the incident and promptly make two turns as described in the rule. Together, these rules require a boat that decides to take a penalty to do so as soon as possible after the incident. The rule does not provide for time for a boat to deliberate whether she has broken a rule. If she delays in doing her penalty turns, she is still liable to be disqualified.

The facts found by the protest committee, including in particular the official diagram, lead to the conclusion that W did not sail well clear of all other boats “as soon after the incident as possible...” No facts were found to suggest that any other

boat's presence prevented W from sailing well clear and completing her penalty turns before rounding the mark. In fact, she chose to round the mark, tack and proceed several hull lengths upwind before beginning her penalty turns.

W's appeal is denied, and the decision of the protest committee is upheld. W remains disqualified.

*September 1990*

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## **APPEAL 61**

*Lido 14 4830 vs. Lido 14 4509*

### **Rule 61.1, Protest Requirements: Informing the Protestee**

*"First reasonable opportunity" means as soon as practicable, not as soon as convenient.*

[ diagram ]

### **Facts and Decision of the Protest Committee**

Shortly before finishing a race, *Lido 14 4830* (PW) and *Lido 14 4509* (PL) were close-reaching on port tack. As they approached the finishing line, PW hailed PL for room to pass astern of a starboard-tack boat (S). PL passed astern of S and finished. PW, believing she was not given sufficient room, tacked onto starboard to leeward of S, gybed onto port, luffed to a close-hauled course, tacked onto starboard, crossed the finishing line, and then hailed "Protest."

The protest committee found the protest invalid and closed the hearing because the hail was not made "at the first reasonable opportunity" as required by rule 61.1. PW appealed.

### **Decision of the Appeals Committee**

"First reasonable opportunity" means as soon as practicable, not as soon as convenient. The maneuvers performed by PW after the incident and before hailing clearly demonstrate that her hail was not made at the first reasonable opportunity.

PW's appeal is denied, and the decision of the protest committee is upheld.

*April 1992*

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## **APPEAL 62**

*International One Design 15 vs. International One Design 1*

### **Rule 63.3(a), Hearings: Right to Be Present**

*If witnesses can overhear or observe any portion of the hearing except when present to give testimony, they are not “excluded.”*

### **Facts and Decision of the Protest Committee**

*International One Design 15 and International One Design 1 were involved in an incident at a mark. IOD 15 protested, and IOD 1 was disqualified by the protest committee after a hearing. The hearing was held in a room approximately 20 feet by 20 feet, in which the witnesses were present throughout the hearing. The protest committee stated in its conclusions that, because of the size of the room and the noise level, it was unlikely that any of the witnesses could have heard any portion of the hearing except while giving their own testimony.*

*IOD 1 appealed on several procedural grounds, including the claim that during the hearing at least one witness for IOD 15 was allowed to remain in the room where the hearing was held other than while giving testimony.*

### **Decision of the Appeals Committee**

The room in which the protest hearing was held was small enough that witnesses could have observed the positioning of model boats and overheard portions of the hearing other than while giving their own testimony. Therefore, witnesses were not “excluded except when giving evidence,” as required by rule 63.3(a). Because of this error, which was not correctable, the hearing was invalid.

*IOD 1’s appeal is upheld. The decision of the protest committee is reversed, and IOD 1 is re-instated in her finishing place.*

*November 1992*

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## **APPEAL 63**

*Boomerang vs. Premature Acceleration*

### **Rule 63.3(a), Hearings: Right to Be Present**

### **Rule 63.6, Hearings: Taking Evidence and Finding Facts**

*If the protest committee accepts, without the consent of the parties, written testimony from witnesses who are not available to be questioned, or fails to exclude witnesses except when they are giving their own testimony, the hearing is invalid.*

### **Facts and Decision of the Protest Committee**

*Boomerang believed that she saw Premature Acceleration touch a mark while racing and protested. The protest committee disqualified Premature Acceleration for breaking rule 31 (Touching a Mark). She appealed, claiming that the protest committee had made several procedural errors, including failing to exclude witnesses except when giving evidence and accepting, without the consent of the*

~~parties, written testimony from witnesses not present, and that the hearing was therefore invalid.~~

#### **Decision of the Appeals Committee**

~~Replies from the protest committee to the appeals committee's questions under rule R5.4 (Inadequate Facts; Reopening) show that the protest committee erred in its conduct of the hearing. First, it accepted, without the consent of the parties, written testimony from two witnesses who were not present, and therefore not available to be questioned. Rule 63.6 gives the parties to the hearing the right to question any person who gives evidence. Second, the committee allowed witnesses to remain in the hearing room throughout the hearing, including the times when the parties and other witnesses were giving their evidence and being questioned. Rule 63.3(a) requires that witnesses be excluded from the hearing except while giving their own evidence. Because of these errors, which were not correctable, the hearing was invalid.~~

~~Premature Acceleration's appeal is upheld. The decision of the protest committee is reversed, and Premature Acceleration is reinstated in her finishing place.~~

~~April 1993~~

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## **APPEAL 64**

*Star USA 7602 Request for Redress*

### **Definitions, Party**

#### **Rule 70.1, Appeals and Requests to a National Authority**

*A boat may appeal a redress decision only if she is a party to the hearing in which the decision was made. A boat is not a party to a redress hearing merely because her finishing place is affected by a decision on another boat's request for redress. A boat does not become a party to a hearing by requesting that the hearing be reopened.*

### **Facts and Decision of the Protest Committee**

*Star USA 7179 (A) requested redress after Race 3 of the Bacardi Cup series, claiming that the race committee had improperly displayed a signal governing the start of the race. Neither Star USA 7592 (B) nor Star USA 7602 (C) participated in the hearing of A's request for redress, nor requested in writing to do so, under the [US Sailing](#) prescription to rule 63.2 (Time and Place of the Hearing; Time for Parties to Prepare). The protest committee decided the redress request by directing the race committee to re-sail the race.*

*B, under rule 66 (Reopening a Hearing), requested that the hearing be reopened, claiming that the protest committee had erred in its decision and that she was a party to the hearing of A's request for redress because her finishing score had been affected. She also requested redress, claiming that her series score had been made*

significantly worse by the protest committee's decision. The protest committee decided not to reopen the hearing and refused to consider B's request for redress.

After the last race of the series, the protest committee reconvened with different members, reopened A's request for redress at the request of the race committee, reversed its original decision, and directed that Race 3 be included in the series results. C then requested redress, claiming that her series score had been made significantly worse by the protest committee's latest decision. The protest committee refused to hear C's request for redress and she appealed.

#### **Decision of the Association Appeals Committee**

The association appeals committee upheld C's appeal because the protest committee had refused to hear her request for redress. It also directed that Race 3 be excluded from the series after concluding that the protest committee had erred by including it. B appealed.

#### **Decision of the Appeals Committee**

~~Only a party to a hearing may appeal. A boat is a party to a hearing when she is a protestor or a protestee. For a redress hearing, a boat requesting redress or for which redress is requested or a redress hearing is being called under rule 60.3(b) (Right to Protest; Right to Request Redress or Rule 69 Action) is a party to a hearing~~ Only a party to a hearing may appeal. A boat is a party to a hearing when she is a protestor, a protestee, or a boat requesting redress or for which redress is requested. B was not a party to the hearing in A's request for redress merely because her series results were affected by the decision on that request for redress. Furthermore, B did not participate in that hearing or request in writing to do so, which would have required the protest committee to request redress for her, as was her right under the [US Sailing](#) prescription to rule 63.2. For the same reasons, B was not a party to C's request for redress. She was a party to a hearing in her request for redress concerning the protest committee's decision on A's request for redress, but she did not appeal the protest committee's decision not to hear her request for redress.

Since B was not a party to the protest committee's decision that was appealed to the association appeals committee by C, her appeal to US Sailing is invalid and cannot be considered.

Because there was no valid appeal to US Sailing, the US Sailing Appeals Committee cannot consider the correctness of the association appeals committee's decision. Therefore, that decision remains unchanged and Race 3 is excluded from the series.

*September 1993*

*Revised January 2021~~17~~, to conform to the change to the definition Party*

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### **APPEAL 65**

*Flying Scot 80 vs. Flying Scot 112*

**Commented [D16]:** To conform to the new definition Party

### **Rule 61.1(a), Protest Requirements: Informing the Protestee**

*The test of whether two occurrences were one or two incidents is whether the second occurrence was the inevitable result of the first. A boat intending to protest another boat for two incidents during a race, no matter how close in time, must inform the protested boat that two protests will be lodged.*

### **Facts and Decision of the Protest Committee**

*Flying Scot 80*, on starboard tack, and *Flying Scot 112*, on port tack, were beating to windward. As they converged, *Flying Scot 80* bore away below *Flying Scot 112* to avoid a collision. While *Flying Scot 80* was still bearing away, *Flying Scot 112* tacked. A collision occurred while *Flying Scot 112* was tacking. There was no damage or injury. At the time *Flying Scot 112* tacked, *Flying Scot 80* was to leeward of *Flying Scot 112*.

*Flying Scot 80* hailed "Protest" immediately after the collision. *Flying Scot 112* then took a Two-Turns Penalty.

The protest committee concluded that *Flying Scot 112* had broken rule 10 (On Opposite Tacks) in one incident, and rules 13 (While Tacking) and 14 (Avoiding Contact) in another. The protest committee disqualified *Flying Scot 112* because she had taken only one Two-Turns Penalty. *Flying Scot 112* appealed.

### **Decision of the Appeals Committee**

The test of whether two occurrences were one or two incidents is whether the second occurrence was the inevitable result of the first. Times, distances, the actions of each boat and the prevailing conditions are all relevant to this test; the number of rules that may have been broken is not.

*Flying Scot 112's* tack to starboard and the resulting contact were not the inevitable result of her breaking rule 10, because she could have continued on port tack. Therefore, the appeals committee concludes that the boats were involved in two separate incidents.

Rule 61.1(a) refers to "an incident." A boat intending to protest another boat for two incidents during a race, no matter how close in time, must inform the protested boat that she intends to protest twice. Because *Flying Scot 112* hailed "Protest" without indicating that two protests would be made, there was only one valid protest. After the incidents, *Flying Scot 112* took one Two-Turns Penalty. Since there is nothing in the facts found to suggest otherwise, the appeals committee assumes that *Flying Scot 112* exonerated herself from the breach in the incident that was the subject of the valid protest.

*Flying Scot 112's* appeal is upheld. The decision of the protest committee is reversed, and *Flying Scot 112* is reinstated in her finishing place.

*December 1994*

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## APPEAL 66

*Leading Lady vs. Aliens Ate My Buick*

**Rule 61.1(a), Protest Requirements: Informing the Protestee**

**Rule 63.5, Hearings: Validity of the Protest or Request for Redress**

*A 2 inch by 8 inch protest flag on a 40-foot boat is not of sufficient size or of suitable proportions to be “conspicuously displayed.”*

### **Facts and Decision of the Protest Committee**

Near the windward mark, *Leading Lady* and *Aliens Ate My Buick*, two 40-foot boats, were involved in an incident. *Leading Lady* immediately hailed “Protest” and displayed a 2 inch by 8 inch strip of red cloth from her backstay. The protest committee concluded that the strip of red cloth was inadequate to qualify as a flag on a 40-foot boat, and therefore found the protest to be invalid and closed the hearing. *Leading Lady* appealed.

### **Decision of the Appeals Committee**

The strip of red cloth qualified as a protest flag in the context of rule 61.1(a) because it was a red flag. However, rule 61.1(a) also requires a boat to “conspicuously display” the protest flag. This requirement is necessary to inform other boats in the race, as well as the boat to be protested, that a boat intends to protest.

The phrase “conspicuously display” must be interpreted in the context of the size of the boat displaying the flag. An object that is conspicuous is not merely visible; it “catches one’s eye or attention” or is “obvious to the eye or mind” (dictionary references). Whether the flag is displayed conspicuously depends on a number of considerations, such as the place on the boat from which the flag is displayed, its proximity to other objects of the same or a similar color, and the size of the flag in relation to the size of the boat. On a 40-foot boat a 2 inch by 8 inch flag is too small to be conspicuous. In this case, the flag’s proportions also detracted from the conspicuousness of its display.

Since the requirement of rule 61.1(a) that the flag be conspicuously displayed was not met, the protest committee, acting under rule 63.5, should have found that the protest was invalid for that reason, and closed the hearing. The protest committee’s reason for finding the protest invalid is incorrect.

*Leading Lady*’s appeal is denied, and the decision of the protest committee is corrected as described above.

*December 1994*

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## APPEAL 67

*635 vs. 2641*

**Rule 61.1(a), Protest Requirements: Informing the Protestee**

*Failure to display a protest flag during a period of time when some member of the crew is not otherwise occupied is a failure to display it “at the first reasonable opportunity.” If a protest flag is not displayed at the first reasonable opportunity, the protest is invalid and the hearing must be closed.*

**Facts and Decision of the Protest Committee**

Two 20-foot boats were approaching the windward mark. Just before rounding, 635 was clear ahead of 2641. 2641, moving faster than 635, hit the transom of 635. At the time of the incident, each crew member of 635 was prepared to hoist the spinnaker. However, immediately after the incident the helmsman inspected the transom for damage and found only minor damage. While he did so, for approximately 20 seconds, the two other crew members were unoccupied. The spinnaker was then set, and after that the protest flag was displayed. The protest committee concluded that the flag was not displayed at the first reasonable opportunity, declared the protest invalid, and closed the hearing. 635 appealed.

**Decision of the Appeals Committee**

635 did not display her protest flag “at the first reasonable opportunity,” as required by rule 61.1(a). During the time before the spinnaker was hoisted, two crew members had a reasonable opportunity to display the protest flag, but did not do so.

635’s appeal is denied, and the decision of the protest committee is upheld.

*December 1994*

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**APPEAL 69**

*Zoom vs. Golden Greek*

**Rule 63.2, Hearings: Time and Place of the Hearing; Time for Parties to Prepare****Rule 63.3(a), Hearings: Right to Be Present****Rule 63.5, Hearings: Validity of the Protest or Request for Redress****Rule 63.6, Hearings: Taking Evidence and Finding Facts**

*A protest committee must find facts to decide whether or not a protest is valid, basing that decision on evidence taken in a protest hearing in compliance with the rules.*

**Facts and Decision of the Protest Committee**

*Zoom* protested *Golden Greek*. The protest committee believed the protest was delivered too late and, without holding a hearing, decided that it was invalid. *Zoom* appealed.

### **Decision of the Appeals Committee**

Rule 63.5 requires a protest committee to decide at “the beginning of the hearing...whether all requirements for the protest...have been met.” This requires the protest committee to open a hearing, then take evidence and find sufficient facts to determine whether or not the protest is valid. The hearing must be conducted in compliance with the rules.

The rules impose several requirements for conducting a hearing. Among them are that the parties must be notified of the time and place of the hearing (see rule 63.2); that the parties be permitted to be present when evidence is taken (see rule 63.3); and that the protestor be allowed to bring evidence that the protest is valid (see rule 63.6). None of these procedures were followed in reaching the decision that the protest was invalid.

*Zoom*'s appeal is upheld. The decision of the protest committee is nullified. As rule 71.2 (National Authority Decisions) permits, the protest is returned for a new hearing, which must begin with finding facts about the validity of the protest.

May 1996

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## **APPEAL 70**

*Montana vs. Dauntless*

**Rule 11, On the Same Tack, Overlapped**

**Rule 17, On the Same Tack; Proper Course**

**Rule 18.2(b), Mark-Room: Giving Mark-Room**

*When about to pass a windward mark, a boat's proper course may be to sail above close-hauled.*

[ diagram ]

### **Facts and Decision of the Protest Committee**

*Dauntless* (W), on port tack, crossed ahead of *Montana* (L), on starboard tack, and tacked to windward of L without breaking rule 13 (While Tacking). W was clear ahead of L when she reached a close-hauled course. Soon after, they became overlapped with very little separation between them. The boats remained overlapped at the zone. The protest committee concluded that W failed to stay clear and forced L to bear off below the mark. In her defense, W claimed that L sailed above close-hauled before bearing away.

The protest committee disqualified W for breaking rules 11 and 18.2(b). W appealed.

### **Decision of the Appeals Committee**

As the windward and outside boat, W was required by rule 11 to keep clear of L, and by rule 18.2(b) to give her mark-room. Concerning rule 17, there are no facts as to whether L sailed above close-hauled, but her proper course when approaching the windward mark would have been to sail above close-hauled if that action was required to pass the mark. We see no evidence in the written facts or diagram that she broke rule 17.

W's appeal is denied. The decision of the protest committee is upheld, and W remains disqualified.

May 1996

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## APPEAL 71

*Risky Business vs. Blonde Attack*

### Rule 11, On the Same Tack, Overlapped

#### **Rule 16.1, Changing Course**

#### **~~Part 2, Section C Preamble~~**

#### **~~Rule 18.1(d), Mark Room: When Rule 18 Applies~~**

#### **Rule 19.1, Room to Pass an Obstruction: When Rule 19 Applies**

#### **~~Rule 19.2(b), Room to Pass an Obstruction: Giving Room at an Obstruction~~**

#### **~~Rule 64.1, Decisions: Penalties and Exoneration~~**

#### **~~Rule 64.2, Decisions: Penalties~~**

#### **Rule 64.2, Decisions: Penalties**

*A windward boat that is given room to keep clear by luffing is not exonerated for breaking rule 11 if she bears away and does not keep clear. Section C rules apply at starting marks not surrounded by navigable water. Rule 19, not rule 18, applies when the mark is a continuing obstruction. Rule 19 does not apply until boats are at an obstruction. A penalty can be given even when the protesting boat does not mention the applicable rule.*

[ diagram ]

### **Facts and Decision of the Protest Committee**

Before the start, *Blonde Attack* (A), a J/105, and *Risky Business* (B), a J/27, were beam-reaching on starboard tack parallel to the starting line. B was about one hull length below the starting line, and A was less than a hull length below B. A was clear ahead by about one hull length. They were both approaching a seawall, an obstruction which was perpendicular to the starting line. The port end of the starting line was on the seawall.

When A's bow was two hull lengths from the obstruction, she luffed to a close-hauled course. B bore away and tried to go astern of A, but B's bow made contact with A's starboard stern quarter, causing damage to A. A protested B for breaking under rule 11, 18.2(b) (Mark Room: Giving Mark Room), and B protested A for breaking under rule 16.1. The protest committee disqualified A for breaking under rule 16.1 and she appealed.

### **Decision of the Appeals Committee**

~~The starting mark was a continuing obstruction not surrounded by navigable water. Therefore, rule 18 does not apply, and rule 19 applies when the boats are at the obstruction (see Section C preamble and rule 18.1(d)).~~

~~At position 1, when A was two lengths from the obstruction, she was not yet "at" it, and therefore rule 19 did not apply (see rule 19.1 and Question 123).~~

~~A was clear ahead when the incident began, and therefore held right of way under rule 12 (On the Same Tack, Not Overlapped). When A luffed, two lengths from the obstruction, rule 16.1 required her to give B room to keep clear and she did so. The diagram shows that B had more than enough room to keep clear, by luffing in response to A's luff. She bore away instead. The boats made contact because B changed course toward A, not because of any failure by A to comply with rule 16.1. During the luff the boats became overlapped and rule 11 (On the Same Tack, Overlapped) began to apply. Therefore B broke rule 11 and is not exonerated by rule 43.1 (Exoneration). She also broke rule 14 (Avoiding Contact) by not avoiding contact with A. However, A did not break rule 14 because it was not reasonably possible for her, the right-of-way boat, to avoid contact with B after it became clear that B was failing to keep clear.~~

~~When A was two lengths from the obstruction, she was not yet "at" it, and therefore rule 19 did not apply (see rule 19.1). However, when A was "at" the obstruction, B would also be required to give her room to pass the obstruction under rule 19.2(b) (Room to Pass an Obstruction: Giving Room at an Obstruction).~~

A's appeal is upheld. The fact that A did not mention the applicable rule is irrelevant (see rule ~~64.2, 64.1-64.2~~). The decision of the protest committee is reversed, A is reinstated in her finishing place, and B is disqualified for breaking rules 11 and 14.

*March 1996*

*Revised January 2021, to remove the breakwater from the decision as it had no bearing*

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## **APPEAL 72**

*Family Hour vs. Zephyros*

**Rule 49.2, Crew Position; Lifelines**

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*A crew member briefly leaning out over a boat's lifelines to hold a spinnaker guy after the pole has been removed in preparation for rounding a mark does not break rule 49.2.*

### **Facts and Decision of the Protest Committee**

When approximately 30 seconds from the leeward mark, *Zephyros* released the spinnaker guy from the spinnaker pole and a crew member held the guy by hand, leaning out over the lifelines so as to maximize the distance between the hull and the guy until the spinnaker had to be lowered. Lifelines were required by the class rules. The protest committee disqualified *Zephyros* for breaking ~~under~~ rule 49.2 and she appealed.

### **Decision of the Appeals Committee**

Rule 49.2 allows the torso of a crew member to be outside the lifelines briefly if the crew is performing "a necessary task." Without a spinnaker pole, a spinnaker is less efficient and more unstable. As a boat prepares to round a leeward mark, removing the pole is one of the first necessary steps. From that time until the spinnaker is lowered, holding the guy by hand is a less effective but nonetheless useful means of controlling the spinnaker, which remains a "necessary task" even without the pole. This interval of time is normally a brief one, since generally there is no advantage in flying a spinnaker without a pole.

In this case, where there were approximately 30 seconds remaining before rounding the mark, the time between releasing the guy and lowering the spinnaker was necessarily shorter than that, and met the requirement of "briefly."

*Zephyros'* appeal is upheld. The protest committee's decision is reversed, and *Zephyros* is reinstated in her finishing place.

*December 1996*

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## **APPEAL 78**

*S2 7.9 185 vs. S2 7.9 525*

### **Definitions, Room**

#### **Rule 15, Acquiring Right of Way**

~~**Rule 21(a), Exoneration**~~

~~**Rule 43.1(a), Exoneration**~~

~~**Rule 43.1(b), Exoneration**~~

~~**Rule 43.1(b), Exoneration**~~

#### **Rule 60.3(a)(2), Right to Protest, Right to Request Redress or Rule 69 Action**

*A boat that acquires right of way over a second boat and causes the second boat to break a rule of Part 2 in order to keep clear of her; breaks rule 15 by not initially giving the second boat room to keep clear.*

[ diagram ]

### Facts and Decision of the Protest Committee

After determining that the protest was valid, the protest committee realized that L might have broken a rule, and protested her under rule 60.3(a)(2). It followed the procedures of rule 61.1(c) ([Protest Requirements: Informing the Protestee](#)), and then heard the protests together.

Three S2 7.9s, 520 (L), 525 (M) and 185 (W), were sailing close-hauled on port tack approaching the starting line to start. The wind was 11–14 knots. M was just overlapped with and approximately one and one-half lengths to windward of L. W, sailing slightly faster than M, became overlapped approximately one length to windward of M just prior to the starting signal. After the starting signal but prior to crossing the starting line, L tacked to starboard and acquired right of way over M. M responded by immediately tacking to starboard to keep clear of L, but after completing her tack M was less than ten feet from W. M and W immediately luffed head to wind, but unavoidably collided beam to beam. L avoided contact with M by tacking back to port.

The protest committee found that M had completed her tack and kept clear of L, but completed her tack so close to W that the collision was inevitable. The committee disqualified M for breaking rule 16.1 (Changing Course), and she appealed.

### Decision of the Appeals Committee

While tacking and subject to rule 13, L was required to keep clear of other boats. Once on a close-hauled course, she acquired right-of-way as a starboard-tack boat over M on port tack. Rule 15 required L to initially give M room to keep clear. M promptly tacked to starboard, the only option available to her. When M completed her tack, she immediately broke rule 15 in relation to W, as shown by the fact that she and W collided despite both boats taking immediate avoiding action. The room L was required to give M under rule 15 included space for M to comply with her obligations under the rules of Part 2. L, by depriving M of the space necessary to comply with rule 15 relative to W, failed to give M room to keep clear and compelled her to break rule 15.

L broke rule 15 against M. M broke rule 15 against W and W broke rule 10 against M. However, both M and W were sailing within the room to which they were entitled under rule 15 and are therefore exonerated under rule 43.1(b). ~~21(a)~~ 43.1(b). And both were compelled to break rules by boats that were breaking rules, so they are exonerated by rule 43.1(a). From the time it was clear to M and W that they were not being giving room to keep clear, it was not reasonably possible for them to avoid contact; therefore neither boat broke rule 14.

M's appeal is upheld. The decision of the protest committee is changed. L is disqualified, and M is reinstated in her finishing place.

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September 1999

Revised January 2021, to include the application of rule 14 and to clarify the application of the new exoneration rules

## APPEAL 82

*E Scow V-751 vs. E Scow M-9*

### **Rule 61.1(a), Protest Requirements: Informing the Protestee**

*A boat is not obligated to give priority to displaying a protest flag at the cost of the crew failing to act to keep the boat under control or delaying a spinnaker set.*

### **Facts and Decision of the Protest Committee**

At the windward mark, *E Scow M-9* tacked within the zone onto starboard tack below *E Scow V-751*, approaching the mark on starboard tack. As a result, *V-751* had to sail above close-hauled and, in the same incident, *M-9* hit the mark with her boom. *V-751* hailed “Protest” within three to five seconds after *M-9* hit the mark. The next leg was a short “offset” leg, set at approximately 110 degrees to the windward leg. Wind speed was 15–20 m.p.h. After passing the windward mark, *V-751* sailed the offset leg with all crew members hiking to windward to prevent the boat from capsizing. She then bore away around the offset mark, set her spinnaker and displayed her protest flag. The flag was displayed within 12–20 seconds after *M-9* hit the windward mark. The protest committee upheld the protest and disqualified *M-9* for breaking rule 18.3 (Mark-Room: ~~Tacking~~ ~~Passing Head to Wind~~ ~~Passing Head to Wind~~ in the Zone), and rule 31 (Touching a Mark). *M-9* appealed, claiming that *V-751* did not hail or display her protest flag in sufficient time.

### **Decision of the Appeals Committee**

This appeal is concerned with whether or not *V-751* hailed “Protest” and displayed her protest flag at the first reasonable opportunity for each, as required by rule 61.1(a).

The protest committee found that *V-751* hailed within three to five seconds after *M-9* hit the mark. Three to five seconds was short enough to justify the conclusion that the hail was made at the first reasonable opportunity after the incident.

The protest committee also found that *V-751* displayed her protest flag between 12 and 20 seconds after *M-9*’s boom hit the mark. The committee concluded that “reasonable opportunity” in this case was determined in part by the need for all crew members to hike to windward to keep the boat under control and to hoist and set the spinnaker. We agree with the protest committee’s view that a boat is not obligated to give priority to displaying a protest flag at the cost of the crew failing to act to keep the boat under control or delaying a spinnaker set.

For these reasons, *M-9*'s appeal is denied. The protest committee's decision is upheld, and *M-9* remains disqualified.

April 2002

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### QUESTION 83

*Interpretation Requested by the Lake Michigan Sail Racing Federation*

**Definitions, Mark**

**Definitions, Obstruction**

**Definitions, Rule**

*Government buoys marking a security zone are not obstructions unless they fit the terms of the definition Obstruction. Boats may pass such obstructions on either side unless the sailing instructions prohibit sailing inside the security zone. A boat cannot be penalized under the racing rules for violating government regulations unless the sailing instructions make the regulations a rule governing the event.*

#### **Assumed Facts**

Chicago has several water intake cribs off its shoreline. The cribs are approximately 150 feet in diameter, rise 25 feet above the water, and are surrounded by navigable water. After September 11, 2001, the U.S. government issued security regulations that established "security zones" around these cribs. A ring of buoys marks the perimeter of each security zone, with the buoys approximately 100 yards from the crib. The security regulations state that "No vessel is to penetrate this zone." The sailing instructions state that one of these cribs is a mark of the course. The notice of race and sailing instructions contain no statement that makes the U.S. government security regulations applicable. The sailing instructions do not define the buoys as marks, or the areas identified by the buoys as obstructions.

#### **Question 1**

Are the perimeter buoys part of the mark?

#### **Answer 1**

No. Only the water intake crib is the mark.

#### **Question 2**

Are the perimeter buoys obstructions?

#### **Answer 2**

No. The perimeter buoys are not obstructions, unless they (a) are so large as to qualify under the first part of the definition Obstruction, (b) ~~can~~ be safely passed on ~~either~~ only one side, or (c) are an object or form an area designated as an obstruction by the sailing instructions, as provided in the second sentence of the definition Obstruction.

### Question 3

If the buoys are obstructions, can boats pass on either side without penalty?

#### Answer 3

Yes. No rule prohibits passing an obstruction on a particular side. However, if the buoys form an area designated by the sailing instructions as an obstruction, and if the sailing instructions also prohibit sailing inside the area, a boat passing the side of a buoy that is inside the area could be protested and penalized. The prohibition is necessary because designating the area as an obstruction only brings rules 19 (Room to Pass an Obstruction) and 20 (Room to Tack at an Obstruction) into play, and nothing in those rules prohibits sailing “inside” an obstruction.

### Question 4

If a boat violates the U.S. government security regulations by sailing inside the security zone, can she be penalized under the racing rules?

#### Answer 4

No. A boat cannot be penalized under the racing rules unless the sailing instructions make the applicable U.S. government security regulation a rule governing the event.

May 2003

*Revised January 2021, to conform the decision to the changes in the definition  
Obstruction*

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## APPEAL 84

*Lizzie B. vs. Windfall*

**Rule 19.2(b), Room to Pass an Obstruction: Giving Room at an Obstruction**

~~Rule 21(a), Exoneration~~

~~Rule 43.1(b), Exoneration~~

Rule 43.1(a), Exoneration

**Rule 60.3, Right to Protest; Right to Request Redress or Rule 69 Action**

**Rule 61.1(c), Protest Requirements: Informing the Protestee**

~~Rule 64.1, Decisions: Penalties and Exoneration~~

~~Rule 64.2, Decisions: Penalties~~

Rule 64.2, Decisions: Penalties

**Rule R5.4, Facts and Other Information ~~Inadequate Facts; Reopening (a US Sailing prescription)~~**

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*An appeals committee cannot require a protest committee to protest a boat.  
A protest committee can decide that a boat not a party to the hearing broke a*

rule, although it cannot penalize her. A protest committee complying with rule R5.4 by reopening a hearing to provide additional facts is not entitled to change the decision it made in the original hearing.

[ diagram ]

### **Facts and Decision of the Protest Committee**

Prior to the start, there was an incident involving three overlapped boats: *Lizzie B.* (L), *Windfall* (M) and *Syzygy* (W). L, on a close-hauled course, hailed M to keep clear. M hailed W for room to keep clear but W did not respond. M curtailed her luff to avoid contact with W. L protested M for breaking rule 11 (On the Same Tack, Overlapped). Neither L nor M protested W. The protest committee decided that both M and W had broken rule 11 but that W's position prevented M from luffing which compelled her to break rule 11 and therefore M was exonerated by rule 43.1(a). ~~It therefore exonerated M under rule 64.1(a).~~ It did not penalize W because she was not a party to the hearing. L appealed, claiming that M failed to "strongly assert her right-of-way rights" over W and therefore is was not entitled to exoneratedion.

### **Decision of the Association Appeals Committee**

The association appeals committee said the protest committee's decision that W broke rule 11 was improper, because W had been unable to defend herself as a party to the hearing. Acting under rule R5.4, it directed that "the hearing be reopened and W be made a party to the hearing in accordance with rule 61.1(c)." The protest committee proceeded to protest W, then re-opened the hearing and changed its original decision by disqualifying W. It did not change M's exoneration.

L appealed again. The association appeals committee denied the appeal, and L appealed to US Sailing.

### **Decision of the Appeals Committee**

Rule R5.4 permits an appeals committee to direct a protest committee to reopen a hearing only "when [the appeals committee] decides [the facts] are inadequate" or that additional information is needed. The association appeals committee therefore erred in attempting to use rule R5.4 to direct the protest committee to reopen the hearing so as to "make W a party" to the hearing. A protest committee's decision to protest a boat is discretionary, as provided in rule 60.3 and therefore an appeals committee has no authority in the matter.

The association appeals committee also erred when it concluded that the protest committee acted improperly in deciding that W broke rule 11. A protest committee cannot penalize a boat that has broken a rule if that boat is not a party to a hearing (see rules 63.1 ~~—~~ Hearings: Requirement for a Hearing. ~~and 64.2~~ ~~64.1—64.2~~ [Decisions: Penalties—and Exoneration]). However, no rule precludes a protest committee from deciding, based on the facts, that any boat in the incident has broken a rule. In this case, although W was not a party to the hearing, the protest committee was able to find sufficient facts to decide that she broke rule 11.

In addition, throughout the incident M and W were required to keep clear of L by rule 11. As the right-of-way boat, L was an obstruction to the other two boats.

Between M and W, M was the inside boat and W was the outside boat. As the outside boat, W was required by rule 19.2(b) to give M room between her and L. “Room” was the space M needed to sail between L and W in a seamanlike way in the existing conditions, including space to comply with her obligations under the rules of Part 2 (see the definition Room). W failed to give room to M and therefore broke rule 19.2(b).

In responding to the association appeals committee’s decision, the protest committee failed to comply with rule 61.1(c). When acting under that rule, a protest committee must make the decision to protest “during the hearing of a valid protest.” In this case, however, the protest committee informed W that she was being protested on the day before the hearing was reopened. The protest was therefore invalid.

The protest committee also erred in changing its original decision by disqualifying W. When acting on a request from an appeals committee under rule R5.4, a protest committee is limited to promptly providing the additional facts or information to the appeals committee; the protest committee does not have the right to change its decision.<sup>22</sup>

L’s appeal is denied. The association appeals committee’s first decision is nullified, and its second decision concerning M’s exoneration is upheld. The protest committee’s original decision is upheld. W broke rule 11, but is not penalized because she was not a party to the hearing. M also broke rule 11, but is exonerated ~~by under rule 21(a) 43.1(b) or 64.1(a) 64.2(a) 43.1(a).~~

April 2003

*Revised January 2021, to conform to the new exoneration rules*

*Revised January 2017*

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## QUESTION 86

*Interpretation Requested by the Balboa Yacht Club*

### **Definitions, Finish**

~~**Rule 21, Exoneration**~~

~~**Rule 43.1(b), Exoneration**~~

~~**Rule 43.1(b), Exoneration**~~

### **Rule 62.1, Redress**

~~**Rule 64.1(a), Decisions: Penalties and Exoneration**~~

~~**Rule 64.2(a), Decisions: Penalties**~~

*A boat that touches a finishing mark and then takes a penalty does not finish until she crosses the finishing line after taking her penalty. Exoneration does not provide for cancelling a penalty a boat has taken voluntarily or for*

*compensating her for distance, time or places lost in taking the penalty. A boat that voluntarily takes a penalty and thereby worsens her score is not entitled to redress.*

[ diagram ]

### **Assumed Facts**

Two 24-foot boats overlapped on starboard tack, WI to windward and LO to leeward, approach a finishing mark to be left to starboard. WI was overlapped inside LO when the first of them reached the zone. WI crosses the finishing line, but in doing so she touches the finishing mark because LO has not given her sufficient mark-room. WI hails "Protest," then takes a penalty under rule 44.2 (Penalties at the Time of an Incident: One-Turn and Two-Turns Penalties), and re-crosses the finishing line. The race committee scores WI based on her second crossing of the finishing line. The protest committee disqualifies LO for failing to give WI mark-room as required by rule 18.2(b) (Mark-Room: Giving Mark-Room).

### **Question 1**

May the protest committee decide that WI was exonerated by rule 43.1(b) ~~WI under rule 21 43.1(b) or rule 64.1(a) 64.2(a)~~ and instruct the race committee to score her based on her first crossing of the finishing line?

### **Answer 1**

~~WI was exonerated by rule 43.1(b). The protest committee is required to exonerate WI under rule 21 43.1(b) or rule 64.1(a) 64.2(a)~~ but her score cannot be based on her first crossing of the finishing line. WI crossed the finishing line, and then touched the finishing mark before clearing the line. She then took a One-Turn Penalty ~~to exonerate herself~~ for her breach of rule 31, as permitted by rule 44.2. Once ~~WI~~ took her penalty, she had not "finished" yet (see the definition Finish). She "finished" and complied with rule 44.2 when, after completing her penalty and sailing completely to the course side of the line, she crossed the finishing line again (see the second sentence in rule 44.2 and the definition Finish). The protest committee cannot ignore or undo the penalty.

### **Question 2**

In this situation, would WI be entitled to redress, possibly in the form of basing her score on her first crossing of the finishing line?

### **Answer 2**

No. For a boat to be entitled to redress, rule 62.1 requires that her score must have been made significantly worse "through no fault of her own." When a boat voluntarily takes a penalty and thereby loses distance, time or places, her own actions prevent her from meeting that requirement.

Furthermore, none of the conditions for redress in rules 62.1(a), (b), (c) or (d) are met.

August 2005

## QUESTION 87

*Interpretation Requested by the Bayview Yacht Club*

### **Rule 86.1(c), Changes to the Racing Rules**

*“Class rules” as used in rule 86.1(c) and elsewhere in the racing rules refers to rules of a class association. A class association is an association of people who, among other things, control the rules that state the physical specifications for boats of that class. Only class associations have the authority to change racing rules under rule 86.1(c).*

#### **Assumed Facts**

An association of clubs publishes rules to govern the racing among the clubs for one-design classes, including rules on competitor eligibility, courses, scoring and personal equipment that may be used while racing. One rule changes rule 42 (Propulsion), and the association cites rule 86.1(c) as its authority to make the changes.

#### **Question 1**

Is the association a “class” within the meaning of *The Racing Rules of Sailing*?

#### **Answer 1**

No. “Class” as used in *The Racing Rules of Sailing* refers to either

- a) a class of boat; i.e., a grouping of boats of a specific kind that conform to prescribed physical specifications, or
- b) a class association; i.e., an association of people who, among other things, control the rules that state the physical specifications for boats of that class, which are used to determine whether or not a particular boat is, in fact, a boat of that class. These rules are the class rules for that boat. The association does not fit this description and therefore is not a class association.

#### **Question 2**

Do the rules of the association validly change rule 42?

#### **Answer 2**

No. In rule 86.1(c), class rules are the rules of a specific class association (see Answer 1). Since the association is not a class association, its rules are not class rules and therefore cannot change rule 42.

*October 2005*

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## APPEAL 89

*The Dumpster vs. Flood Tip*

### Definitions, Mark-Room

#### Rule 13, While Tacking

#### Rule 18.1, Mark-Room: When Rule 18 Applies

#### Rule 18.2(b), Mark-Room: Giving Mark-Room

#### Rule 18.2(c), Mark-Room: Giving Mark-Room

#### Rule 18.2(d), Mark-Room: Giving Mark-Room

*Mark-Room does not include room to tack, even when tacking may be part of the rounding maneuver, unless the boat entitled to mark-room is overlapped inside and to windward of the boat required to give her mark-room. A boat that enters the zone clear astern does not necessarily have to give the boat clear ahead mark-room under rule 18.2(b) until the boat clear ahead completes her rounding maneuver. During the maneuver, all of rule 18 may cease to apply, or rule 18.2(b) alone may cease to apply. In either case, if the boat clear ahead tacks she becomes subject to rule 13 when she passes head to wind.*

[ diagram ]

### Facts and Decision of the Protest Committee

Approaching a windward mark to be left to port on port tack on a close reach, *Flood Tip* (B) was clear astern of three overlapped port-tack boats, *Bad Moon* (I) on the inside, *The Dumpster* (M) in the middle, and *mr. happy* (O) on the outside. At the mark, I tacked to starboard on a course to the offset mark. The other two overlapped boats, M and O, continued past the mark on close-hauled courses and then began to luff as part of their tacking maneuvers. In the meantime, B, sailing faster, rounded the mark and overlapped M to windward. After passing the mark, B was changing course away from M. M stopped her luff when she reached head to wind. Had she continued her tacking maneuver, M would have been hit approximately amidships on her port side by B. M protested B.

The protest committee disqualified B, concluding that she was obligated to give mark-room to M until M had completed her tack, which was part of her rounding maneuver. B appealed.

### Decision of the Appeals Committee

While B was clear astern of M, B was required by rule 12 (On the Same Tack, Not Overlapped) to keep clear and by rule 18.2(b) to give mark-room. When they became overlapped, B was required by rule 11 (On the Same Tack, Overlapped) to keep clear. The protest committee erred in thinking that B was required by rule 18.2(b) to give mark-room to M until M completed her rounding maneuver. Mark-room did not include room to tack because M was not overlapped to windward and on the inside of B (see the definition Mark-Room).

When B became overlapped with M, M had left the mark on its required side and had room to sail up to head to wind which was as far as she could change course without passing head to wind. Therefore B had given M mark-room and ~~rules 18.2(b) and 18.2(c) had ceased to apply~~ rule 18 no longer applied (see rule 18.1 18.2(d)). Furthermore, If M had passed head to wind, rules 18.2(b) and 18.2(c) would have ~~also~~ ceased to apply (see rules 18.1(a) and 18.2(d)), and rule 13 would have begun to apply. Because M did not pass head to wind, rule 13 did not apply. Neither B nor M broke a rule.

B's appeal is upheld. The decision of the protest committee is reversed and B is reinstated in her finishing place.

June 2006

Revised January 2021~~17~~, to conform to the changed rule 18.1

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## APPEAL 90

### *Brain Cramp Request for Redress*

#### **Rule 62.2, Redress**

*“Incident” in rule 62.2 refers to an occurrence that fits within one of the four categories listed in rule 62.1. When a boat is scored OCS and requests redress, the incident is the alleged race committee error made soon after the start of the race. When there is good reason to do so, the protest committee is required to extend the time limit for delivering a request for redress.*

#### **Facts and Decision of the Protest Committee**

At the start of a race at approximately 1400 on Friday, the race committee properly identified *Brain Cramp* as being OCS (“Did not ~~start~~ on the course side of the starting line at her starting signal and failed to *start*, or broke rule 30.1”) but did not hail her number as required by the sailing instructions. The race committee came ashore at 1700, and by 1730 had posted the scores listing *Brain Cramp* as OCS. *Brain Cramp* believed that she was not OCS had started correctly. She finished first in the race, returned to shore and left the venue before the scores were posted. The protest time limit was 1800. *Brain Cramp* returned to the venue around 2100 and saw the posted scores. The sailing instructions required protests to be “filed with the protest committee at the Protest Desk... .” It was reasonable to expect that requests for redress should be filed in the same way. At the time that *Brain Cramp* saw that she was scored OCS, there was no one at the protest desk. *Brain Cramp* delivered her request to the protest committee on Saturday as soon as it was possible to do so.

The protest committee decided that the request for redress was invalid because it was not delivered within the time limit. The protest committee considered the “incident” referred to in rule 62.2 to be the posting of the scores, and on that basis determined that the time limit for the request was two hours after the posting, or

1930 on Friday. *Brain Cramp* appealed, alleging that her discovery of the posted scores, not their posting, was the incident.

### **Decision of the Appeals Committee**

“Incident” in rule 62.2 refers to an occurrence that fits within one of the four categories listed in rule 62.1. In this case, the incident was the alleged omission by the race committee of *Brain Cramp*’s number from the list of hailed OCS boats, which occurred soon after the start of the race, not the posting of the scores. Because the protest time limit was later than two hours after the incident, the time limit for the request for redress was the protest time limit (see rule 62.2).

There is no rule that requires the race committee to post the scores at a particular time, nor is there any rule that requires competitors to look for posted scores at any particular time. Although it may be advisable to look for the scores the same day they are posted, it is not required, nor is it always practical or possible to do so. It is, however, reasonable to expect a boat to look at the scores before racing the next day.

Rule 62.2 requires the protest committee to extend the time limit “if there is good reason to do so.” In this case, at the end of the time limit *Brain Cramp* had not seen the scores, so it would have been unreasonable to expect her to deliver a request for redress within that time limit. Therefore the protest committee was obligated to extend it.

The appeal is upheld. The protest committee is directed to extend the time limit for delivering *Brain Cramp*’s request for redress to a reasonable time; for example, a time after the protest desk was staffed on Saturday. The protest committee is also directed to reopen the hearing of *Brain Cramp*’s request for redress.

*June 2006*

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## **APPEAL 91**

*Protest Committee vs. Competitor X*

### **Rule 69.2(e), Misconduct: Action by a Protest Committee**

*An allegation of misconduct must be sufficiently specific to permit the competitor to prepare a defense.*

### **Facts and Decision of the Protest Committee**

After the fourth race of a regatta, the protest committee received a report alleging that in that race Competitor X deliberately collided with another boat and used intimidating and abusive language.

The protest committee notified Competitor X in writing that a rule 69 hearing would be held the following morning. The notice stated that “a hearing will be convened to inquire into your alleged unsportsmanlike conduct during racing yesterday.”

In the hearing, the protest committee found that Competitor X deliberately broke several rules and used aggressive behavior and intimidation to gain an unfair advantage. The protest committee disqualified Competitor X's boat and instructed the race committee to score the boat DNE ("Disqualification that is not excludable") under rule 69.2(h)(2) for the fourth race. Competitor X appealed, claiming that the protest committee did not inform him of the alleged misconduct.

### **Decision of the Appeals Committee**

Hearings conducted under rule 69 require the protest committee to first inform the competitor in writing of the alleged misconduct; see rule 69.2(e). The allegation must be sufficiently specific to permit the competitor to prepare a defense.

In this case, the protest committee's reference to "unsportsmanlike conduct" in its hearing notice failed to inform the competitor of the specific misconduct that was alleged to be unsportsmanlike. Therefore the appeal is upheld. The protest committee's decision is nullified, and Competitor X's boat is reinstated in her finishing place.

*June 2006*

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## **APPEAL 92**

*Vuja De vs. Tutto Bene*

**Rule 14(a), Avoiding Contact**

**Rule 18.2(b), Mark Room: Giving Mark-Room**

**Rule 18.2(e), Mark-Room: Giving Mark-Room**

**~~Rule 21, Exoneration~~**

**Rule 31, Touching a Mark**

**~~Rule 43.1(b), Exoneration~~**

**Rule 43.1(a), Exoneration**

**Rule 43.1(b), Exoneration**

*"Doubt" refers both to doubt by boats involved in or observing an incident and to doubt by the protest committee. Even when rounding a mark, a right-of-way boat must act to avoid contact when it is clear that the other boat is not keeping clear or giving mark-room.*

[ [Revised](#) diagram ]

### **Facts and Decision of the Protest Committee**

In winds of 10–12 knots, two cruising class boats on port tack, *Vuja De* and *Tutto Bene* (Boat A and Boat B), were broad-reaching on converging courses toward a leeward mark to be left to port. ~~Boat~~-B, larger and faster, was overtaking A on a

course that would take her inside A at the mark. Just before A reached the zone, she hailed “No overlap” and B hailed “Overlap” and “Mark-room.”

~~Boat-B~~, now overlapped inside, continued to overtake A. At position ~~43~~ in the diagram, A luffed sharply into B’s path. ~~Boat-B~~’s bow struck A’s windward side near her stern, and the force of the impact spun A’s hull counter-clockwise so that her bow hit the mark. Both boats were damaged.

Both boats protested, A citing rules 11 (On the Same Tack, Overlapped), 14 and 18.2(b), and B rules 14 and 18.2(b). ~~Boat-A~~ also argued that because she was rounding the mark within the mark-room to which she was entitled and therefore exonerated for any breach of rule 16.1 (Changing Course) ~~by~~~~under~~ rule ~~21~~ ~~43.1(b),43.1(b)~~, rule 14 did not apply in her case. The protest committee disqualified B for breaking rules 11, 14 and 18.2(b). After considering whether A had broken rule 14 it decided that “at the time the imminent collision became apparent to A, it was impossible for her to make any maneuver that would help avoid the collision.” ~~Boat-B~~ appealed.

#### **Decision of the Association Appeals Committee**

The association appeals committee upheld the protest committee’s decision that B broke rules 11, 14 and 18.2(b), but also disqualified A for breaking rule 14. ~~Boat-A~~ appealed.

#### **Decision of the Appeals Committee**

Concerning rule 18.2(b), whether or not the boats were overlapped when A reached the zone determines its applicability. Rule 18.2(e) applies when there is doubt about that. “Doubt” refers both to doubt by boats involved in or observing an incident and to doubt by the protest committee during a hearing. In this case, the exchange of hails between the boats when the overlap status was not obvious was evidence that there was doubt as to whether B had obtained the overlap in time, and therefore it should have been presumed that she had not. ~~Boat-B~~ failed to keep clear as required by rule 11 and to give mark-room as required by rule 18.2(b).

Since there was a collision rule 14 also applied. As the boats neared the mark, B should have anticipated that A was about to change course to round the mark, and she should have been aware that when A was rounding the mark within the mark-room to which she was entitled, she would be exonerated ~~by rule 43.1(b)~~~~under rule 21(a) 43.1(b)~~ if she broke rule 16.1. ~~Boat-B~~ could have avoided contact with A by taking avoiding action before A changed course, and it was “reasonably possible” (see rule 14) for her to do so. She also could have avoided sailing into a position that made it impossible for her to avoid contact after A changed course. Therefore B broke rule 14 as well as rule 11 and 18.2(b).

~~Boat-A~~ also was subject to rule 14. Her argument that rule 14 did not apply to her because she is exonerated from any breach of rule 16.1 is incorrect. Rule ~~43.1(b)~~ ~~21~~ ~~43.1(b)~~ does not provide for exoneration for breaking rule 14 even when the right-of-way boat is entitled to mark-room.

Somewhere between position ~~32~~ and position ~~43~~ in the diagram it ~~became clear should have been clear to A~~ that B was not keeping clear of ~~her~~A nor giving her mark-room. However, A made no attempt to avoid contact, but instead continued to luff/luffed toward the mark. Her luff made contact inevitable. The protest committee concluded that A did not break rule 14, because at the moment she realized that a collision was “imminent” it was too late for her to avoid it. However, rule 14(a) refers to a different moment: it requires a right-of-way boat to act to avoid contact when “it is clear that the other boat is not keeping clear or giving room or mark-room.” ~~As~~Before A luffed, ~~well~~ before she realized the collision was imminent, she could see that B was not keeping clear nor giving mark-room. That was when rule 14 required her to act to avoid contact. Although she can be exonerated for breaking rule 16.1 when she was changing course to round the mark, she cannot be exonerated for breaking rule 14 by failing to avoid the collision.

~~Boat~~A also broke rule 31 when she touched the mark. Although A was partially responsible for the collision with B, her contact with the mark was not a necessary consequence of that collision. A had no means of anticipating that a boat about to be overlapped between her and the mark might cause her to hit the mark, nor did she have any means of avoiding the mark after the collision. She therefore was compelled by B to break rule 31. Therefore A is exonerated for her breach of rule 31 by both rule 43.1(a) and 43.1(b).~~However, rule 21(b) 43.1(b) provides for exonerated of a boat “compelled” to break rule 31. Although A was partially responsible for the collision with B, her contact with the mark was not a necessary consequence of that collision. Boat A had no means of anticipating that a boat about to be overlapped between her and the mark might cause her to hit the mark, nor did she have any means of avoiding the mark after the collision. She therefore was compelled by B to break rule 31, so was entitled to exoneration under rule 21(b) 43.1(b).~~

~~Boat~~A’s appeal is denied. She remains disqualified for breaking rule 14 but is exonerated for her breach of rule 31.

June 2006

Revised January 2021, to correct the last position in the diagram such that B holds her course throughout the incident, and to clarify the application of rule 14

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### QUESTION 93

*Interpretation Requested by the San Diego Yacht Club*

**Rule 41(c), Outside Help**

**Rule 41(d), Outside Help**

**Rule 85.1, Changes to Rules**

**Rule 86.1(b), Changes to the Racing Rules**

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**Rule 89.2(a), ~~Organizing Authority~~; Organizing Authority; Notice of Race; Appointment of Race Officials**

**Rule 90.2(a), Sailing Instructions**

**Rule J1.2(1), Notice of Race Contents**

*The term “information freely available” in rule 41(c) means information available without monetary cost and easily obtained by all boats in a race. “Easily obtained” means the information is available from public sources that competitors can reasonably be expected to be aware of and can locate with little effort. The term “information freely available” refers only to the information, not to equipment or software needed to receive or read the information.*

**Question 1**

In rule 41(c), what does “information freely available” mean?

**Answer 1**

The term “information freely available” in rule 41(c) means information available without monetary cost and easily obtained by all boats in a race. “Easily obtained” means the information is available from public sources that competitors can reasonably be expected to be aware of and can locate with little effort. An example is information on the National Weather Service (NOAA) website and its radio stations.

Information for which a fee has been paid or that is not easily obtained by all boats in a race is not “freely available.” Examples are information supplied only to those boats that have paid a subscription or other fee, and information whose source is obscure.

The term “information freely available” refers only to the information, not to equipment or software needed to receive or read the information. A fee paid to connect to a network that is free and publicly available, such as the Internet, is not a fee paid for the information available there. Similarly, the cost of a computer or software used to connect to or search the Internet is not a cost of the information obtained by those means.

However, if the access to the information, including any equipment or software, is provided for a fee by the same person or entity that provides the information, then the information has a monetary cost and is not “freely available.” Examples are satellite radio companies and ocean routing services when they have charged the recipient of the information a subscription fee for accessing their channels or files.

**Question 2**

In rule 41(d), can the term “disinterested source” be interpreted using the definition Conflict of Interest?

**Answer 2**

No. A disinterested source is one that is completely impartial concerning the outcome of the race.

### **Question 3**

In rule 41(d), does the term “unsolicited” refer to the act of requesting information or of marketing the information?

### **Answer 3**

The term “unsolicited” means not requested by the recipient.

### **Question 4**

Can an organizing authority restrict the information that can be received by a boat without modifying rule 41?

### **Answer 4**

No. However, the notice of race (which the organizing authority is required to publish; rule 89.2(a)) or the sailing instructions (which the race committee is required to publish; rule 90.2(a)) may change some racing rules, one of which is rule 41 (rule 86.1(b)). If either document changes a rule, it must specifically identify the rule when stating the change (rule 85.1). Furthermore, changes to rule 41 that permit the receipt of otherwise prohibited information or restrict the information that can be received by a boat while racing would often help competitors decide whether to attend the event or convey information competitors will need before the sailing instructions become available. In such a circumstance, the change must be included in the notice of race (rule J1.2(1)). See also ~~World Sailing~~ Case 120.

*February 2007*

*Revised January 2017*

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## **QUESTION 94**

*Interpretation requested by the Columbia Model Yacht Racing Association*

**Rule 60.2(b), Right to Protest; Right to Request Redress or Rule 69 Action**

**Rule 60.3(b), Right to Protest; Right to Request Redress or Rule 69 Action**

**Rule 60.4(b), Right to Protest; Right to Request Redress or Rule 69 Action**

**Rule 62.2, Redress**

**Rule 63.2, Hearings: Time and Place of the Hearing;**

**Time for Parties to Prepare: US Sailing prescription**

**Rule 63.1, Hearings: Requirement for a Hearing**

~~**Rule 64.2, Decisions: Decisions on Redress**~~

~~**Rule 64.3, Decisions: Decisions on Redress**~~

~~**Rule 64.3, Decisions: Decisions on Redress**~~

**Rule 65.2, Informing the Parties and Others**

**Rule 89.2(b), ~~Organizing Authority~~ Organizing Authority; Notice of Race; Appointment of Race Officials**

**Rule 91, Protest Committee**

**Rule E6.6, Redress**

*At a radio sailing regatta, the race director may be both the chairman of the race committee and the protest committee, and may be a committee of one. Properly submitted protests and requests for redress must be heard by the protest committee. Redress can be given for more than one race. The protest committee must provide its decision in writing if properly requested by a party.*

**Assumed Facts**

A regatta was held for radio sailing boats and was sailed under *The Racing Rules of Sailing* as changed by Appendix E, Radio Sailing Racing Rules. A race director was appointed by the organizing authority, which was the host club, to be the chairman of both the race committee and the protest committee. The race director was the only member of each committee.

**Question 1**

May the race director be the chairman of both the race committee and the protest committee at the same event?

**Answer 1**

Yes. As required by~~Under~~ rules 89.2(b) and 91, the organizing authority appoints the race committee and can appoint the protest committee, or under rule 91 the race committee can appoint the protest committee. In either case, the same person can serve on both committees.

**Question 2**

May a protest committee have only one member?

**Answer 2**

Yes. Although it is generally preferable to have more than one, no rule specifies the number of members of a protest committee.

**Question 3**

May the race director refuse to accept a written request for redress that is properly submitted?

**Answer 3**

No. All protests and requests for redress that are delivered to the race office must be heard by the protest committee unless the protest committee allows the protest or request to be withdrawn by the boat (see rule 63.1).

**Question 4**

May the race director give redress to a boat without a hearing being conducted?

**Answer 4**

No. A decision on redress may not be made without a hearing by the protest committee that complies with the rules in Part 5, Section B (see rule 63.1).

**Question 5**

May the race director give redress to any boat?

**Answer 5**

Yes, provided a boat has requested request in writing and identified the reason for making it (see rules 62.2 and ~~64.3~~~~64.2-64.3~~) and the request meets the requirements of rule 62.1 as amended by rule E6.6, or the race, protest or technical committee has requested redress or called a hearing to consider redress under rule 60 or the US Sailing prescription to rule 63.2.

**Question 6**

May a boat be given redress for more races than the one in which the redress incident took place, and can the scores of other boats that did not request redress be adjusted?

**Answer 6**

Yes. Rule ~~64.3~~~~64.2-64.3~~ requires the protest committee to “make as fair an arrangement as possible for all boats affected.” The arrangement might be, for example, to adjust the scores of one or more boats for one race, for several races, or for the series as a whole.

**Question 7**

After a protest or redress hearing, may the race director withhold a written decision from a person requesting it?

**Answer 7**

No, provided the person requesting the written decision was a party to the hearing and requested the written decision in writing from the protest committee within seven days of being informed of the decision (see rule 65.2).

*March 2007*

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**APPEAL 96***Pocito Request for Redress***Rule 30.2, Starting Penalties: Z Flag Rule**

*When the Z Flag Rule is in effect, a boat in the triangle defined in that rule during the minute before the starting signal can avoid being penalized only if the race is postponed or abandoned before the starting signal that would end that one-minute period.*

### **Facts and Decision of the Protest Committee**

In a regional championship of the J/24 class, the race committee made four starting signals in five attempts to start Race 4. After each of the first two starting signals there was a general recall. For the third attempt the preparatory signal was flag Z, to signal that rule 30.2 was in effect. During the minute before the starting signal, *Pocito* was in the triangle defined in rule 30.2. She therefore broke the rule and became subject to the 20% scoring penalty, provided that the race was “not...postponed or abandoned before the starting signal” (see rule 30.2’s penultimate sentence).

At the end of the one-minute period the third starting signal was made, followed by a general recall. The race was not postponed or abandoned before that starting signal. During the fourth attempt the race was postponed before the starting signal. Then the fifth attempt was made and was successful. *Pocito* was scored with a 20% scoring penalty. She requested redress, which the protest committee denied. She appealed, arguing that she should not have been penalized because the race “was postponed prior to its successful start,” which was during the fifth attempt.

### **Decision of the Appeals Committee**

The appellant’s argument substituted the starting signal in the fourth attempt for the starting signal in the third attempt. Rule 30.2 referred to the third starting signal, the one that ended the one-minute period in which *Pocito* broke rule 30.2. When the Z Flag Rule is in effect, a boat in the triangle defined in that rule during the minute before the starting signal can avoid being penalized only if the race is postponed or abandoned before the starting signal that would end that one-minute period.

The appeal is denied, and the decision of the protest committee is upheld. *Pocito*’s score for Race 4 remains unchanged.

*April 2007*

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## **APPEAL 97**

*Silhouette vs. Air Boss*

### **Definitions, Clear Astern and Clear Ahead; Overlap**

#### **Rule 10, On Opposite Tacks**

#### **Rule 14, Avoiding Contact**

#### **~~Rule 18, Mark-Room~~**

#### **Rule 18.1, Mark-Room: When Rule 18 Applies**

#### **Rule 18.2, Mark-Room: Giving Mark-Room**

*When rule 18 applies, there must be both an “inside” and an “outside” boat in order for rule 18.2 to create rights and obligations. When boats are approaching a mark from different directions, there may be no “inside” or “outside” boat, in which case the rules of Section A and B apply.*

[ diagram ]

### **Facts and Decision of the Protest Committee**

Two PHRF fleets in the same event were racing on different courses that used the same government buoy as a rounding mark. For one fleet it was a windward mark, to be left to port. For the other fleet it was a leeward mark, also to be left to port. Two boats in the first fleet approached the mark close-hauled on starboard tack, with *Silhouette*, a Beneteau 40.7, overlapped to leeward and about one half of a hull length behind *CC Rider*. *Air Boss*, a J/105 sailing in the other fleet, approached the mark on a broad reach, also on starboard tack. When *Air Boss* was about one hull length from the mark, she gybed onto port and luffed to round the mark. As she luffed, her bow made contact with the port side of *Silhouette*, causing damage. At the time of contact, *Silhouette* was going about 5.5 knots, and *Air Boss* about 3.5. *Silhouette* and *Air Boss* protested each other.

The protest committee decided that rule 18 applied, and that when *Air Boss* reached the zone, *Silhouette* and *Air Boss* were overlapped, since neither was clear astern of the other. It decided that at that time *Silhouette* was the leeward boat, and that rule 11 applied, requiring *Air Boss* to keep clear. It also decided that *Silhouette* was the inside boat with respect to the mark, and therefore *Air Boss* was required by rule 18.2(b) to give mark-room.

The protest committee also decided that since rule 18 applied, the gybe by *Air Boss* did not break the overlap, rule 18.2(b) continued to apply, rule 11 no longer applied, and rule 10 began to apply. The committee further decided that as *Air Boss* began to luff, she failed to give mark room and to keep clear of *Silhouette*, breaking rules 10 and 18.2(b). Since it was reasonably possible for *Air Boss* to avoid the contact and she failed to do so, she also broke rule 14. When it became clear that *Air Boss* was not going to keep clear, *Silhouette* was unable to change course to avoid the contact, because of the presence of *CC Rider* to windward. Therefore *Silhouette* did not break rule 14. *Air Boss* was disqualified, and appealed.

### **Decision of the Appeals Committee**

At position 1, *Air Boss* reached the zone and rule 18 began to apply (see rule 18.1). At that time, *Silhouette* and *Air Boss* were overlapped.

The first sentence of rule 18.2(b) concerns situations in which boats are overlapped when approaching a mark. However, in order for that sentence to create rights and obligations between two boats, there must be both an “inside” and an “outside” boat. An “inside” boat refers to the one rounding or passing “between” the other boat and the mark. At position 1 on the diagram, neither *Air Boss* nor *Silhouette* can be identified as the inside or the outside boat in the sense that one of them is (or is about to be) “between” the other boat and the mark. If the courses of the boats were projected straight ahead, neither boat would pass between the mark and the other boat. Alternatively, if the courses were projected to show the boats sailing around the mark, each boat’s course would pass between the mark and the other boat’s course. Neither of these methods identifies an “inside” or “outside” boat.

In these circumstances, no part of rule 18 creates any obligations, and therefore rule 10 applies. Beginning at position 4 in the protest diagram, *Air Boss* was on port tack, and was required to keep clear of *Silhouette*, on starboard tack. In colliding with *Silhouette*, *Air Boss* broke both rules 10 and 14, and is disqualified. As determined by the protest committee, *Silhouette* did not break rule 14, since it was not reasonably possible for her to avoid the contact in the very short interval of time after it became clear that *Air Boss* would not pass astern of *Silhouette*.

The appeal by *Air Boss* is denied, and the decision of the protest committee is corrected as explained above.

April 2007

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## QUESTION 99

*Interpretation Requested by the South Atlantic Yacht Racing Association*

### **Introduction**

### **Definitions, Rule**

### **Rule 71.4, National Authority Decisions**

*The World Sailing cases do not have the status of rules but are “authoritative interpretations and explanations of the rules.” Therefore, when the relevant facts from a protest are essentially similar to the facts of a case, the interpretations in the case should be accepted by the protest committee as correct interpretations of the racing rules for that protest.*

*Like the World Sailing cases, the published US Sailing appeals are not rules. However, decisions of the US Sailing Appeals Committee are final; therefore, when the relevant facts from a protest are essentially similar to the facts of a US Sailing appeal, and no World Sailing case conflicts with the interpretations in the appeal, a protest committee in the United States is well advised to follow the appeal in making its decision.*

### **Question 1**

Do the World Sailing cases have the status of rules?

### **Answer 1**

No. The World Sailing cases are not rules (see the definition Rule), and therefore do not have the status of rules.

### **Question 2**

What is the status of the World Sailing cases?

### **Answer 2**

The Introduction to *The Racing Rules of Sailing*, which ranks as a “rule” (see the definition Rule), states that ~~the~~ World Sailing recognizes the interpretations in its

*Case Book* as “authoritative interpretations and explanations of the rules.” Therefore, when the facts from a protest are essentially similar to the facts of a case, the interpretations in the case should be accepted by the protest committee as correct interpretations of the racing rules for that protest.

### Question 3

What is the status of the published US Sailing appeals?

### Answer 3

Like the World Sailing cases, the published US Sailing appeals are not rules. However, as stated in rule 71.4, decisions of the US Sailing Appeals Committee are “final.” Therefore, when the facts from a protest are essentially similar to the facts of a US Sailing appeal, and no World Sailing case conflicts with the interpretations in the appeal, a protest committee in the United States is well advised to follow the appeal in making its decision.

March 2007

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## QUESTION 100

*Interpretation Requested by the Noroton Yacht Club*

### Rule 32.1, Shortening or Abandoning After the Start

#### Rule 90.3(e), Scoring

#### Race Signals

*A race committee may abandon a race after all the boats have finished or retired. If it is on shore, the committee need not announce the abandonment with race signals. There is no time limit for abandoning a race unless the notice of race has put rule 90.3(e) in effect.*

#### Assumed Facts

The race committee starts a two-lap windward-leeward race in good sailing conditions. After the leading boats round the first windward mark it appears that fog may settle in. When the first boat is 200 yards from the leeward mark, the race committee decides that the fog may create problems, and properly signals and executes a shortened course. All boats finish and their places are recorded. No more races are held that day. After the race committee is on shore, it decides that the fog had affected the fairness of the race and it abandons the race, posting a notice to that effect on the official notice board. No abandonment signals are made at any time.

### Question 1

Is it a proper action for a race committee to abandon a race for one of the reasons listed in rule 32.1(a) to (d) after all boats have finished or retired?

### Answer 1

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Yes. Rule 32.1 allows a race committee to abandon such a race, provided it first considers “the consequences for all boats in the race or series.” The phrase “after one boat has sailed the course and finished” specifies the beginning of a time period that has no specified ending. Therefore, the time period does not end when two boats have finished, or when all boats have finished, or at any other specific later time.

#### **Question 2**

If abandoning such a race is a proper action of the race committee, does it make any difference whether the race committee does so while it is still on station, has left the racing area, or is on shore?

#### **Answer 2**

No.

#### **Question 3**

If abandoning such a race is a proper action of a race committee when it is on shore, must the race committee signal abandonment with “N,” “N over H,” or “N over A” with three sounds?

#### **Answer 3**

No. When the race committee is on shore, it normally will post its decision on the official notice board.

#### **Question 4**

If a race committee abandons a race when it is on shore, is there a time limit before which it must do so?

#### **Answer 4**

No, unless the notice of race has put rule 90.3(e) in effect stating an end time for the event.

*February 2008*

*Revised January 2021, to include new rule 90.3(e)*

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### **QUESTION 101**

*Interpretation Requested by the Corinthian Sailing Club*

**~~Rule 28.1, Sailing the Course~~**

**~~Rule 28.1, Sailing the Race~~**

**~~Rule 28.1, Sailing the Race~~**

**~~Rule 43.1(a), Exoneration~~**

**~~Rule 64.1(a), Decisions: Penalties and Exoneration~~**

*A right-of-way boat compelled by a keep-clear boat to cross the starting line early is not relieved of her obligation to start as described in the definition Start.*

### Assumed Facts

Five seconds before the start of the race, S and P converged close to the starting line. P luffed and passed head to wind in front of S. Before P came to a close-hauled course, S luffed in order to avoid a collision and, by doing so, crossed the starting line to the course side of the line.

At the starting signal, both boats were clearly on the course side of the starting line. S hailed "Protest" and displayed a red flag. P bore off around the starting mark, returned completely to the pre-start side of the starting line, and then crossed it. S sailed the course without returning to the pre-start side of the starting line.

The race committee scored S OCS ("Did not ~~start~~ on the course side of the starting line at her starting signal and failed to *start*, or broke rule 30.1"). After the race P retired in acknowledgement of her breach of rule 13. S protested P, claiming she had been forced over the starting line because of P's breach of rule 13. The protest committee found that P broke rule 13, but did not penalize her because she had already taken a penalty. It then ~~decided S was exonerated by rule 43.1(a), exonerated S under rule 64.1(a), deciding because~~ she had been compelled to break rule 28.1 ~~by because of~~ P's breach, and reinstated her in her finishing place.

### Question

Was S compelled to break rule 28.1 and therefore ~~correctly~~-exonerated ~~under by~~ rule 43.1(a)-64.1(a)?

### Answer

No. Rule 28.1 requires S to "start," i.e., cross the starting line after the starting signal as stated in the definition Start, and permits her to comply with the rule at any time before she finishes. Though it was unfortunate that S was forced onto the course side of the starting line before the starting signal because of P's breach of rule 13 (While Tacking), S was not breaking a rule at that time. However, S broke rule 28.1 when she finished without first returning to the pre-start side of the starting line and starting. As P did not prevent S from returning to the pre-start side of the starting line and starting, S was not "compelled" to break rule 28.1 as the term is used in rule 43.1(a). Because S did not start as required by rule 28.1 and is not exonerated for that breach, she is to be scored OCS.

~~No. Rule 28.1 required S to "start" as stated in the definition Start and permitted her to correct an error in starting before she finished. Nothing prevented her from returning to the pre-start side of the starting line and starting correctly. Therefore she was not "compelled" to break rule 28.1, as the term is used in rule 64.1(a). Since S did not start correctly, she is to be scored OCS.~~

See Case 140

*January 2009*

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## APPEAL 102

*Xtra Xtra vs. Pony Express*

### **Rule 63.6, Taking Evidence and Finding Facts**

*A protest committee may find it difficult to reconcile conflicting testimony, but must not penalize a boat without first finding facts about the incident that led to the protest and basing its decision on them.*

### **Facts and Decision of the Protest Committee**

In light winds, *Pony Express* and *Xtra Xtra*, both 30-foot boats, approached a windward mark. As *Pony Express* rounded the mark, a crew member on *Xtra Xtra*, approximately 100 yards astern, believed he saw *Pony Express*'s spinnaker touch the mark as it was being hoisted. *Xtra Xtra* hailed "Protest" and displayed a red flag. After the race *Xtra Xtra* delivered a protest that met the requirements for validity and alleged that *Pony Express* had touched the windward mark with her spinnaker.

The protest committee found as fact that two other boats had heard *Xtra Xtra*'s hail, but found no facts relating to whether *Pony Express* had touched the mark. It decided to disqualify her for breaking rule 31 (Touching a Mark). *Pony Express* appealed.

### **Decision of the Appeals Committee**

In her appeal, *Pony Express* argued that the protest committee's procedures were improper in that it failed to comply with rule 63.6 when it disqualified her without finding facts to justify that decision.

In reply to questions from the appeals committee, the protest committee did not directly supply a finding of fact that *Pony Express* had touched the mark, but said it had based its decision on other considerations, discussed below.

Rule 63.6, one of the rules that govern a protest committee's procedures, requires it to "take the evidence," then "find the facts and base its decision on them."

In some cases a protest committee will hear conflicting testimony and therefore must attempt to resolve the conflict by evaluating the testimony to determine which of it is more trustworthy. In this case, however, the protest committee did not follow that procedure. It stated that because it had been unable to reconcile the conflicting testimony of the parties and no witnesses were presented to support the testimony of *Pony Express*, it based its decision on two considerations other than facts about the incident. One basis was that *Pony Express* failed to produce a witness to testify that she did not touch the mark, and the other was the assumed integrity of the protestor.

The committee's use of these considerations clearly did not constitute basing its decision on facts found as required by rule 63.6. That error was sufficient to make

the decision invalid. The considerations themselves were also invalid. No rule requires a party to provide supporting witnesses, and although in some cases a protest committee may need to consider its impressions of a competitor's veracity when evaluating testimony, it cannot substitute those impressions for findings of fact about an incident.

The appeal is upheld, the protest committee's decision is reversed, and *Pony Express* is reinstated in her finishing place.

January 2009

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### APPEAL 103

*Alpha Puppy vs. Fleet S1 boats excepting Deception,  
and  
Jeannette vs. Fleet S2 boats excepting Jarlen*

~~Rule 28.2, Sailing the Course~~

~~Definitions, Sail the Course~~

~~Rule 28.1, Sailing the Race~~

~~Rule 28.2, Sailing the Race~~

~~Rule J2.1(5), Sailing Instruction Contents~~

*When the sailing instructions do not identify which marks are rounding marks ~~as required by the rules~~, boats are not required to treat any marks as rounding marks.*

[ diagram ]

#### **Facts and Decision of the Protest Committee**

For PHRF Fleets S1 and S2, the course for Race 2 was course 21, described in the sailing instructions as "RC Boat-18-8-4-Knox Finish" with "All Marks Left to Port." The course diagram was not incorporated into the sailing instructions. A change to the sailing instructions moving the starting and finishing areas to the "Race Deck" was posted during a postponement ashore.

The incidents described in the protests all involved how boats passed or rounded mark 4. If mark 4 was a rounding mark ([see the definition Sail the Course and rule 28.1](#) ~~(see rule 28.2(b))~~), then boats would have been required to round mark 4 in such a way that a taut string representing their tracks would touch the mark in order to comply with rule 28.1~~2~~ (solid-line course in the diagram). If mark 4 was not a rounding mark, then boats could have complied with rule 28.1~~2~~ by merely passing mark 4 on their port sides (dashed-line course in the diagram).

After rounding mark 8, most boats sailed directly to the finishing area, leaving mark 4 to port without rounding it. Other boats, including the protestors, rounded mark 4,

leaving it to port, and then sailed to the finish. *Alpha Puppy* and *Jeannette* protested all of the boats in their respective fleets that left mark 4 to port without rounding it.

The protest committee concluded that “the course was amended [by relocating the finishing line] in such a way that allowed, as a practical matter, a boat to travel from mark 8 to the finishing line while leaving mark 4 to port.” The protest committee reasoned that because the new finishing line location meant that the “taut string” would not touch mark 4, “RRS 28.1~~2~~ was satisfied merely by passing it and leaving it to port.” It dismissed the protests, and both protestors appealed.

### **Decision of the Appeals Committee**

The protest committee’s conclusion that the relocation of the finishing line resulted in changing mark 4 from a rounding mark to a passing mark was incorrect. Whether a mark is a rounding mark or a passing mark (see [the definition Sail the Course](#)~~rule 28.2~~) is not changed solely because the configuration of the course has changed.

~~Rule 28.1 requires boats to “sail the course” as that term is defined in the Definitions. The definition Sail the Course (b) states, “A boat sails the course provided that a string representing her track from the time she begins to approach the starting line from its pre-start side to start until she finishes, when drawn taut...touches each mark designated in the sailing instructions to be a rounding mark.” The sailing instructions did not designate any marks as rounding marks. When sailing instructions fail to identify any rounding marks, boats are not required to treat any marks as rounding marks. Therefore, the boats that rounded mark 4 to port and the boats that only passed it on their port sides all complied with rule 28.1.”~~

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~~Rule J2.1(5) requires that the sailing instructions identify all rounding marks. The sailing instructions failed to do so and therefore were ambiguous about whether any of the marks were rounding marks. When sailing instructions fail to identify any rounding marks, boats are not required to treat any marks as rounding marks. Therefore the boats that rounded mark 4 to port and the boats that only passed it on their port sides all complied with rule 28.2.~~

The appeal is denied, and the decision of the protest committee is confirmed to the extent that none of the protested boats that left mark 4 to port are to be disqualified.

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*December 2010*

*Revised January 2021, to conform to the new definition Sail the Course*

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## **APPEAL 108**

*NA 25 vs. NA 32*

**Rule 11, On the Same Tack, Overlapped**

**Rule 15, Acquiring Right of Way**

**Rule 16.1, Changing Course**

*When a leeward boat is changing course toward a windward boat, she may need to change course away from the windward boat when the boats get near each other in order to continue to give the windward boat room to keep clear.*

[diagram]

#### **Facts and Decision of the Protest Committee**

~~In 6-8 knots of wind, two Naval Academy 44s (44 foot sloops, 29,000 lbs. displacement, fin keel, spade rudder) were approaching the starting line on starboard tack. At about one minute before the start (position 1), NA 32 (W) was clear ahead and her speed was about 2.5 knots (10.5 seconds per boat length). Shortly before position 2, NA 25 (L), whose speed was about 3 knots (8.5 seconds per boat length) established an overlap from clear astern. Between positions 2 and 4, L was changing her course, first by luffing and then by bearing away, and W was changing her course to keep clear. No contact occurred. L protested W for breaking rule 11. Neither boat was penalized by the protest committee. L appealed.~~

#### **Decision of the Appeals Committee**

~~When L established her leeward overlap from clear astern, she initially gave W room to keep clear, as required by rule 15. Between positions 2 and 3, W was promptly luffing away from L. Between positions 2 and 4, while L, the right of way boat, was changing her course, she was required by rule 16.1 to give W room to keep clear. At position 3, L could sail her course with no need to take avoiding action because the difference in speeds between the boats and the closing angle were so slight. Furthermore, L would not have made immediate contact with W if she had luffed or borne away. However, if L had held her course W very soon would have been unable to keep clear. L then promptly bore away to meet her obligation under rule 16.1. Therefore, after the overlap began, W kept clear and L gave her room to do so. No rule was broken.~~

~~The appeal is denied, and neither boat is to be penalized.~~

*April 2012*

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### **QUESTION 110**

*Interpretation Requested by the US Sailing Offshore/Big Boats Management Committee*

#### **Basic Principles, Environmental Responsibility**

**Rule 47, Trash Disposal**

**Rule 47, Trash Disposal**

**Rule 55, Trash Disposal**

*Broken sail stops made of yarn or rubber bands that fall into the water are trash, even if they are biodegradable. Putting sail stops in the water breaks*

rule ~~4755-47~~. The penalty for breaking rule ~~47.55-47~~ can be less than disqualification.

#### **Assumed Facts**

Boat A stops a sail using commercially available biodegradable yarn or rubber bands. When the sail is hoisted and the stops are broken, some of them fall into the water. Boat B protests A, alleging that she broke rule ~~4755-47~~. In the hearing, A argues that the stops are not trash because they are biodegradable.

#### **Question**

Did Boat A break rule ~~4755-47~~?

#### **Answer**

Yes. The broken sail stops that fall into the water, although biodegradable, are trash that the competitor intentionally put in the water; therefore Boat A broke rule ~~4755-47~~. This applies at all times while afloat during an event; however the penalty for breaking rule ~~47.55-47~~ may be less than disqualification.

September 2013

Revised January 2017

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### **QUESTION 111**

*Interpretation Requested by the San Diego Yacht Club*

#### **Rule 65, Informing the Parties and Others**

*If an action is not specifically discussed in the rules of Part 5, Section B, a protest committee may act as it considers appropriate.*

#### **Question 1**

In rule 65.2 or any other rule in Part 5, Section B, is a protest committee prohibited from providing written copies of items listed in rule 65.1 to the parties without having received a written request for them?

#### **Answer 1**

No. Rule 65.3 gives permission for a protest committee to publish items listed in rule 65.1 unless there is a good reason not to do so. The protest committee may also may direct that the information be confidential to the parties.~~When a rule of Part 5, Section B, does not specifically discuss an action, then that rule does not govern the matter in question. In this case, there is no rule discussing this action of the protest committee; therefore the protest committee may act as it considers appropriate.~~

#### **Question 2**

If one party submits a written request for a written copy of the items listed in rule 65.1, is a protest committee prohibited from also sending a copy to the other party without the second party having submitted a written request for it?

**Answer 2**

No. See Answer 1.

**Question 3**

Is a protest committee prohibited from posting the items listed in rule 65.1 on a bulletin board or notice board where they may be seen by anyone?

**Answer 3**

No. See Answer 1.

**Question 4**

If the action in Question 3 is permissible, is there a time period that must pass after the protest committee informs the parties of the decision before the items listed in rule 65.1 may be posted for public viewing?

**Answer 4**

No. See Answer 1.

**Question 5**

If a party submits a written request for a written copy of the items listed in rule 65.1 to the race committee or organizing authority, instead of the protest committee, is it permissible for the race committee or organizing authority to send the copy to the party?

**Answer 5**

Yes. See Answer 1.

**Question 6**

If a party submits a written request for a copy of the items listed in rule 65.1 to the race committee or organizing authority, instead of to the protest committee, is it permissible for the race committee or organizing authority to forward the request to the protest committee on behalf of the party, or must the party submit the request directly to the protest committee?

**Answer 6**

Rule 65.2 does not require that the party submit the written request directly to the protest committee.

*September 2013*

*Revised January 2021, to conform to new rule 65.3*

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**QUESTION 112**

*Interpretation Requested by the San Diego Yacht Club*

**Introduction****Definitions, Party**

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### **Rule 63.3(a), Right to be Present**

*Interpretations of the definition Party and rule 63.3(a) concerning representation in hearings, and a discussion regarding the terms in Terminology in the Introduction of The Racing Rules of Sailing.*

#### **Question 1**

In a protest hearing, who or what is considered a “protestor” and a “protestee” in the definition Party and therefore has “a right to be present throughout the hearing of all the evidence” under rule 63.3(a), Hearings; Right to Be Present?

#### **Answer 1**

A “protestor” is a boat or committee that has acted under rule 60, Right to Protest; Right to Request Redress or Rule 69 Action. A “protestee” is the boat being protested.

#### **Question 2**

It is stated in Terminology in the Introduction of *The Racing Rules of Sailing* that “boat” means “a sailboat and the crew on board.” If a party (as defined in the definition Party) is a boat, is the party entitled to have more than one member of the crew present throughout the hearing, or is the party required to select a single representative to be present on the party’s behalf throughout the hearing of all the evidence?

#### **Answer 2**

Rule 63.3(a) states that “A representative of each *party* to the hearing has the right to be present throughout the hearing of all the evidence.” Therefore each party is only allowed one representative in the hearing, unless an interpreter is needed (see Appendix M2.1).

#### **Question 3**

Once a person is designated as the boat’s representative and appears at a hearing, is that person the only person who may act as the “party” on behalf of the boat for all subsequent hearings or other interactions with the organizing authority, race committee or protest committee?

#### **Answer 3**

No. The person or persons having the authority to designate a boat’s representative (for example, an owner or co-owners) may terminate the appointment of one representative and appoint another one.

#### **Question 4**

If the answer to Question 3 is “No,” then who are the person(s) entitled to represent the boat and act as the party?

#### **Answer 4**

A boat’s representative can be any person designated by the person or persons having the authority to do so, with the exception that at a hearing of a protest

claiming a breach of a rule of Part 2, 3 or 4, the representative “shall have been on board at the time of the incident.” See rule 63.3(a).

#### **Question 5**

In the definition Party, the last sentence states, “However, the protest committee is never a *party*.” The definition Party states in part “A *party* to a hearing is... (c) for a ~~request for~~ redress hearing under rule 62.1(a): the body alleged to have made an improper action or omission.” Rule 62.1(a) states that “an improper action or omission of the ~~... race committee, protest committee, ...~~” may be the basis of a claim for redress. If it is a protest committee whose alleged error or omission is the reason for a request for redress, how can the protest committee be both a party and never a party?

#### **Answer 5**

The term “protest committee” in the last sentence of the definition Party means the protest committee holding the hearing. If Protest Committee A is the body alleged to have made an improper action or omission, and the hearing is held by a separate protest committee (B), then Protest Committee A will be represented in the redress hearing as a party, and Protest Committee B is the protest committee referred to in the last sentence of the definition.

#### **Question 6**

What is the significance, if any, of placing the definitions of some terms in Terminology in the Introduction to *The Racing Rules of Sailing* instead of in the Definitions?

#### **Answer 6**

The terms defined in the Definitions are terms that have a special definition for the sport that is necessary for understanding the rules in which those terms appear. Readers are informed that a defined term is being used in its defined sense by showing the term in italics. The terms defined in Terminology are frequently used terms with quite simple definitions. When used, they do not appear in italics. If they were to appear in italics, the readability of the rulebook would be diminished.

*September 2013*

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### **APPEAL 113**

*Club 420 6525 Request for Redress*

~~**Rule 63.7, Conflict Between the Notice of Race and the Sailing Instructions**~~

~~**Rule 63.7, Hearings: Conflict Between Rules**~~

~~**Rule 63.7, Hearings: Conflict Between Rules**~~

**Rule 86.1(b), Changes to the Racing Rules**

*Either the notice of race or the sailing instructions may change a racing rule. If they conflict with each other, rule 63.7 applies. A protest committee's decision under rule 63.7 regarding which of two conflicting rules applies is not made in a hearing. The determining factor for applying rule 63.7 is the protest committee's belief about the fairest result. Its decision under rule 63.7 therefore cannot be the basis of a request for redress or a reopening.*

#### **Facts and Decision of the Protest Committee**

In a Club 420 regatta there was a conflict between a rule in the notice of race and one in the sailing instructions. The notice of race stated that each boat's two worst race scores would be excluded from her series score if eleven or more races were completed; the sailing instructions stated that only one would be excluded. Twelve races were completed. *Club 420 6525* based her tactics on her belief that one race score would be excluded. The race committee calculated the final series scores with each boat's two worst race scores excluded, which moved *6525* from first to second place in the series. She requested redress.

After consulting with the race committee, the protest committee believed that scoring the series with each boat's two worst scores excluded would provide the fairest result for all boats. It then denied *6525's* request for redress, and she appealed.

#### **Decision of the Appeals Committee**

Either the notice of race or the sailing instructions may change a racing rule (see rule 86.1(b)). When a protest committee considers a protest or request for redress that involves a conflict between a rule in the notice of race and one in the sailing instructions, it must first decide which rule "it believes will provide the fairest result for all boats affected" (see rule 63.7). Therefore, the determining factor for applying rule 63.7 is the committee's belief about the fairest result. If the committee wishes to obtain information, opinions or advice from others it may do so.

To make that decision the committee is not required to hold a hearing (see rule 63.1). Therefore, none of the other rules of Part 5 of the racing rules governing hearings apply in making that decision. Furthermore, as the protest committee is deciding which of the conflicting rules it believes will provide the fairest result, as required by rule 63.7, that decision cannot be deemed an "improper action" for the purpose of requesting redress under rule 62.1(a) (Redress), or an "error" for the purpose of requesting a reopening under rule 66 (Reopening a Hearing).

*Club 420 6525's* appeal is therefore denied, and the decision of the protest committee is upheld.

*January 2017*

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### **APPEAL 114**

*Manx vs. Tiger Cat*

**Rule 70.1(a), Appeals and Requests to a National Authority**

**Rule R5.4, Facts and Other Information~~Inadequate Facts; Reopening (a US Sailing prescription)~~**

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*When the facts found by the protest committee provide enough detail for an appeals committee to understand the incident and apply the rules, they are not inadequate.*

**Facts and Decision of the Protest Committee**

Two BCats, *Tiger Cat* and *Manx* were approaching the finishing line overlapped on port tack with *Manx* to windward. Neither boat was fetching the committee boat that was marking the starboard end of the finishing line. The two boats tacked simultaneously onto starboard tack within three lengths of the committee boat, at which time *Tiger Cat* was overlapped on the inside of *Manx*. *Manx* did not give *Tiger Cat* mark-room, and as a result *Tiger Cat* hit the committee boat.

*Manx* was disqualified for breaking rule 18.2(a) (Mark Room: Giving Mark-Room). The protest committee decided *Tiger Cat* ~~was~~ was exonerated for her breach of rule 31 (Touching a Mark) ~~under rule 21(b) 43.1(b)~~ by both rule 43.1(a) and 43.1(b) (Exoneration). *Manx* appealed, saying that she disagreed with the facts found by the protest committee.

**Decision of the Appeals Committee**

The basis of the appeal is that the appellant disagreed with the facts found by the protest committee. Rule 70.1(a) states, “a party may appeal a protest committee’s decision or its procedures, but not the facts found.” And rule R5.4(a) states, “An appeals committee shall accept the facts found by the protest committee.” ~~requires the appeals committee to “accept the protest committee’s finding of facts except when it decides that they are inadequate.”~~ Rule R5.4(b) goes on to state, “When an appeals committee decides that the facts found by the protest committee are inadequate, or that it needs other information, the appeals committee shall require the protest committee to (1) provide additional facts or information, or (2) reopen the hearing and report any new facts or information.” In this case, the facts found by the protest committee provided enough detail for an appeals committee to understand the incident and apply the rules, therefore they are not “inadequate” and are the “facts found” referred to in rule 70.1(a).

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*Manx*’s appeal is denied, and the decision of the protest committee is upheld.

*January 2017*

*Revised January 2021, to conform to the changes in US Sailing prescription R5.4*

**QUESTION 115**

*Interpretation Requested by the San Diego Yacht Club*

**Preamble to Part 2**

~~Rule 36, Races Restarted or Resailed~~

~~Rule 44.1(b), Penalties at the Time of an Incident: Taking a Penalty~~

~~Rule 60.3(a)(1), Right to Protest; Right to Request Redress or Rule 69 Action~~

~~Rule 61.1(a)(4), Protest Requirements: Informing the Protestee~~

~~Rule 63.5, Hearings: Validity of the Protest or Request for Redress~~

*Interpretation of the term “serious” in the phrase “serious damage.”*

#### **Question**

Is there a special meaning in the racing rules of the term “serious” when it is used in the phrase “serious damage?”

#### **Answer**

No. The term “serious” is not defined in *The Racing Rules of Sailing (RRS)*. The Terminology section of the Introduction to the RRS states that “other words and terms are used in the sense ordinarily understood in nautical or general use.” One authoritative English dictionary suggests that, when “serious” is used in the phrase “serious damage,” the term means:

important because of possible danger or risk; having potentially undesired consequences; giving cause for concern; of significant degree or amount.

This suggests that when a protest committee has concluded from the facts found that damage occurred in an incident, it must then consider whether any of the four criteria implied by the definition above apply, and if so it should conclude that the damage is “serious.”

Questions to consider may include:

- (1) Did the damage put the safety of the crew at risk?
- (2) Did the damage include a hole in the boat which compromised the integrity of the hull?
- (3) Did the damage adversely impact the boat’s sailing performance in a significant way?
- (4) Will the cost of repairing the damage be a significant amount relative to the market value of the boat?
- (5) Will the value of the boat after repairing the damage be significantly diminished?

*January 2017*

*Interpretation Requested by the Annapolis Yacht Club*

**Rule 60.1(a), Right to Protest; Right to Request Redress or Rule 69 Action**

**Rule 63.8, Hearings: Hearing Involving Parties in Different Races**

**Rule 63.8, Protests Between Boats in Different Races**

**Rule 63.8, Hearings: Hearing Involving Parties in Different Races**

*A boat may protest boats that are sailing in a different race.*

**Assumed Facts**

In a regatta, the J/70 and J/80 classes started together and raced as a single fleet, but were scored separately. After the race, a J/80 delivered a protest to the race office claiming another J/80 and two J/70s broke rule 28.1 (Sailing the RaceCourse-Race) by sailing the wrong course.

**Question 1**

Is the J/80 permitted to protest the two J/70s for breaking rule 28.1?

**Answer 1**

Yes. Although the J/80 was being scored separately from the J/70s, all three boats were racing under *The Racing Rules of Sailing*. Rules 4.1(a)~~3.1(a)~~4.1(a) and ~~3.3(a)~~4.3(a)4.3(a) (Acceptance of the Rules) state, “By participating or intending to participate in a race conducted under these rules, each competitor and boat owner agrees to accept these rules...[and] to be governed by the rules.” The meaning of “boat” in the racing rules is “A sailboat with the crew on board” (see Terminology in the Introduction). Rule 60.1(a) states, “A boat may protest another boat... .” There is no requirement for the protesting boat to be scored in the same race as the boat(s) being protested.

**Question 2**

Would the answer to Question 1 be different if the J/80 and J/70 classes each started and raced as separate fleets?

**Answer 2**

No. There is no requirement for the protesting boat to be racing in the same race as the boat(s) she protests. Moreover, rule 63.8 implies that a protest between two boats must be heard even if those boats are sailing in different races conducted by different organizing authorities.

*May 2017*

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**APPEAL 117**

*Us2 vs. Soulshine and Still Crazy*

**Definitions, Room**

**Rule 11, On the Same Tack, Overlapped**

**Rule 16.1, Changing Course**

**Part 2, Section C Preamble**

**Rule 43.1(b), Exoneration**

**Rule 21, Exoneration**

**Rule 43.1(b), Exoneration**

*When boats are passing a race committee boat and a leeward boat luffs, rule 16.1 requires her to give the windward boat room to keep clear, which includes room to avoid touching the committee boat or breaking a rule of Part 2.*

[ diagram ]

**Facts and Decision of the Protest Committee**

*Us2 (L), Soulshine (M) and Still Crazy (W) were approaching the race committee signal boat, overlapped on starboard tack, to start. As W was passing astern of the committee boat, L luffed. M luffed slightly but was unable to respond further to L's luff without hitting W. W luffed slightly but was unable to respond further to M's luff without hitting the committee boat. L and M bore away to avoid contact. L protested.*

The protest committee disqualified W ~~for breaking~~ rule 11, claiming that she should not have sailed between the leeward boat and the committee boat and that she was "barging." W appealed.

**Decision of the Appeals Committee**

The race committee signal boat was both a mark and an obstruction for L, M and W (see the definitions Mark and Obstruction). However, because the committee boat was surrounded by navigable water and L, M and W were approaching it to start, the rules in Section C of Part 2 (specifically rules 18 (Mark-Room) and 19 (Room to Pass an Obstruction)) did not apply. Accordingly, L was under no obligation to give M and W room to pass the committee boat, and M was under no obligation to give W room to pass the committee boat.

At positions 1 and 2, L and M were able to sail their courses with no need to take avoiding action, and could change course in both directions without immediate contact. Therefore M and W were keeping clear as required by rule 11 (see the definition Keep Clear).

When L luffed (changed course) at position 3, she was required by rule 16.1 to give M and W room to keep clear. This obligation applies even when boats are passing the committee boat and are about to start. "Room" is the space M and W needed to keep clear of L while also complying with their obligations under the rules of Part 2, which includes rules 14 (Avoiding Contact) and 16.1, and rule 31 (Touching a Mark). See Case 114. M luffed as far as she could without risk of having contact with W. M was also required by rule 16.1 to give W room to keep clear which was the space W needed to keep clear of M while also complying with her obligations under the rules of Part 2 and rule 31. W luffed as far as she could without risk of

touching the committee boat which would have broken rule 31. By bearing away, both L and M gave M and W room to keep clear in compliance with rule 16.1.

At position 3, L and M were unable to sail their courses with no need to take avoiding action; therefore M and W broke rule 11. However, as M and W were sailing within the room to which they were entitled ~~by~~under rule 16.1, they are exonerated ~~by rule 43.1(b), under rule 21(a) 43.1(b).~~

W's appeal is upheld, the decision of the protest committee is reversed, and W is reinstated in her finishing place.

Note: The term "barging" is not used in *The Racing Rules of Sailing*. The term is commonly used to refer to the situation where a leeward boat (L) is holding her course and a windward boat (W) sails between the committee boat and L and either hits L or forces L to bear off to avoid contact. In such a case W breaks rule 11 and is not exonerated because L is holding her course and, therefore, rule 16.1 does not apply.

[See also Case 146.](#)

January 2018

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## QUESTION 118

*Interpretation Requested by the Harvard Sailing Team*

### **Rule 41, Outside Help**

### **Rule 62.1(a), Redress**

*Discussion on whether it is an improper action for the race committee to hail boats before the starting signal.*

### **Assumed Facts**

A dinghy regatta with a fleet of 18 boats is being conducted using the Audible-Signal Racing System in Appendix U, [\(a US Sailing prescription\)](#), which includes a requirement to hail OCS boats (rule U4). Neither the notice of race nor the sailing instructions contain any other rule related to hails made by the race committee to boats near the starting line during the countdown to the starting signal. The race committee (RC) line caller is equipped with a megaphone to communicate with the fleet.

During the last minute of the starting sequence for one of the races, the RC line caller notices that several boats are set up very close to the line and fears they will be OCS or even cause a general recall. The line caller makes a clearly audible statement towards the fleet that "some boats are getting very close to the line" or words to that affect. These boats realize they are close, dip a little farther from the line and the fleet starts with no boats OCS. The skipper of one boat requests redress because she feels that she knew where the line was, was set up with good timing for

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the start and felt that other boats which were set up poorly benefited by the RC's actions when they might otherwise have been OCS.

### Question 1

Is the race committee practice of verbally warning the fleet when boats seem to be getting too close to the line too early "improper," as that term is used in rule 62.1(a)?

### Answer 1

The term "improper," as it is used in rule 62.1(a), is not a defined term in *The Racing Rules of Sailing* (RRS). The Introduction to the RRS states, "Other words and terms are used in the sense ordinarily understood in nautical or general use."

The *Oxford English Dictionary* contains these definitions of the term "improper" which, in our opinion, are appropriate for the term's use in rule 62.1(a):

- 1) not in accordance with accepted standards
- 2) inappropriate, unacceptable, unsuitable, irregular
- 3) against the rules

One conclusion we can draw is that an action is "improper" if it is against the rules. Beyond that, our conclusion is that the term is not an absolute, objective term. Its application is based on the context of the situation in which it is being applied; i.e., it is subjective.

No rule in *The Racing Rules of Sailing* forbids the race committee from hailing boats before the starting signal. In fact, Appendix LG, Sailing Instructions Guide, instruction 12.5, provides sailing instruction language regarding the race committee hailing boats before the starting signal. In fact, rule L11.5 (Sailing Instructions Guide) provides sailing instruction language regarding the race committee hailing boats before the starting signal. In some situations this action will be considered acceptable and appropriate, and in some situations it will be considered not acceptable or appropriate; i.e., "improper." One reason given for hailing is that the race committee's job is to get the race started; and having general recalls, and especially multiple general recalls, is frustrating for all the sailors. For these reasons, the answer to Question 1 depends on the level of the event, the norm for races run by that race committee, the consistency with which it is applied, what the sailors want or expect, and what is stated in the sailing instructions or other rules governing the event.

We note that the hailing of boats by the race committee can provide "help" to those boats, but those boats do not break rule 41 because the help is in the form of information freely available to all boats and is unsolicited information from a disinterested source (see rules 41(c) and 41(d)).

### Question 2

Should redress be granted and what form might the redress take?

### Answer 2

Before deciding if any boat is entitled to redress, the protest committee must decide two things. The first is: did the race committee make an improper action? See Answer 1 for a discussion of “improper.” If the protest committee decides the RC action was improper, then the second is: was any boat’s score or place in a race or series made significantly worse, or possibly made worse, through no fault of her own, by the improper action of the race committee?

Whether or not a boat is entitled to redress depends on the claim she makes and the testimony she gives to support the “possibility” that her place in the race was made worse, through no fault of her own, by the RC improper hail. For instance, if all the boats were behind the starting line at the start and no boat’s ability to perform at her best was adversely affected directly as a result of the hail by the race committee, then any worsening of a boat’s score or place was in part the boat’s fault, and she would not be entitled to redress. However, if there was a reasonable possibility that a hailed boat would be OCS, but instead that boat started close to leeward of another boat and by her proximity slowed the other boat down, then the other boat may be entitled to redress.

Regarding what redress would be appropriate, without more facts and information it is not possible to state that in this answer. If it decides to give redress, the protest committee must comply with rule [64.364.2-64.3](#) (Decisions on Redress).

### **Question 3**

During another starting sequence in the same regatta, the identical situation occurs but in this instance the RC line caller specifically identifies sail numbers of boats that are close to the line. Again, another skipper who feels the same as in the previous scenario requests redress. Should redress be granted and in what form?

### **Answer 3**

See Answers 1 and 2.

### **Question 4**

During another sequence two boats are close to the starting line at one minute before the start and no warnings are given. These two boats are hailed OCS after the starting signal and return to start. The skippers request redress claiming that they were not given the same warning as other boats during other sequences during the regatta. Should redress be awarded and in what form?

### **Answer 4**

No. Hails by the race committee prior to the starting signal to boats that were behind, but nearly over, the starting line were not required by any rule. Therefore, their omission did not constitute an improper action or omission by the race committee. Furthermore, the boats contributed in some part to their being OCS and so they do not pass the “through no fault of their own” test in rule 62.1(a).

*June 2018*

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## APPEAL 119

*Jalapeno vs. Zephyr V2.0*

**Rule 11, On the Same Tack, Overlapped**

**Rule 14, Avoiding Contact**

**Rule 15, Acquiring Right of Way**

**Rule 16.1, Changing Course**

**Rule 43.1, Exoneration**

**~~Rule 21, Exoneration~~**

**~~Rule 43.1(b), Exoneration~~**

*A right-of-way boat's obligation to give room ~~under~~ as required by rule 15 does not begin until she becomes the right-of-way boat. At that time she must then do what is necessary to give the keep clear boat room to keep clear. If, while the right-of-way boat is maneuvering to give room, the keep-clear boat is briefly breaking a rule of Section A, she is exonerated by rule 43.1(b). ~~under rule 21(a) 43.1(b)~~.*

[ diagram ]

### **Facts and Protest Committee Decision**

Before the starting signal, *Zephyr V2.0* and *Jalapeno*, two J/30s, were reaching below the starting line with *Jalapeno* clear ahead (position 1). At position 2, *Zephyr V2.0* established an overlap to leeward of *Jalapeno* within inches such that, at that moment, *Zephyr V2.0* could not head up (change course) without making immediate contact with *Jalapeno*. When the overlap began, *Jalapeno* promptly headed up and *Zephyr V2.0* promptly bore away and there was no contact.

Between positions 3–5, *Zephyr V2.0* headed up quickly. Despite responding promptly by heading up, *Jalapeno* could not avoid contact. There was no damage or injury. *Zephyr V2.0* protested at positions 3 and 5. *Jalapeno* protested at position 5.

The protest committee disqualified *Zephyr V2.0* for acquiring the right of way (at position 3) and changing course (from positions 3 to 5) and failing to give *Jalapeno* room to keep clear as required by~~under~~ rules 15 and 16.1. It ~~decided that exonerated~~ *Jalapeno* was exonerated for her breaches of rule 11 at positions 3 by rule 43.1(b), and by both rules 43.1(a) and 43.1(b) at position 5.5, under rule 21(a) 43.1(b). It decided *Jalapeno* did not break rule 14, and that *Zephyr V2.0* did break rule 14, but ~~is~~ exonerated ~~*Zephyr V2.0* by rule 43.1(c)~~ for her breach of rule 14 because there was no damage or injury. *Zephyr V2.0* appealed.

### **Decision of the Appeals Committee**

At position 1, *Zephyr V2.0* was clear astern of *Jalapeno* and required to keep clear of her ~~by~~under rule 12 (On the Same Tack, Not Overlapped). When *Zephyr V2.0* established an overlap to leeward of *Jalapeno*, she acquired the right of way under rule 11. At that time she also became obligated to initially give *Jalapeno* room to

keep clear ~~by~~ rule 15 which she did by promptly bearing away in compliance with rule 15.

When the overlap began, *Zephyr V2.0* was so close to *Jalapeno* that *Zephyr V2.0* could not change course in both directions without making immediate contact with *Jalapeno* (see the definition Keep Clear). Therefore, for a brief time, *Jalapeno* was failing to keep clear ~~as required by~~ rule 11. However, she ~~was~~ exonerated for her breach of rule 11 ~~by rule 43.1(b), under rule 21(a) 43.1(b),~~ because she was sailing within the room to keep clear to which she was entitled under rule 15.

When *Zephyr V2.0* changed course between positions 3–5, she became obligated to give *Jalapeno* room to keep clear under rule 16.1. Despite heading up promptly in response to *Zephyr V2.0*'s course change, *Jalapeno* was unable to keep clear as evidenced by the contact between the boats. *Jalapeno* broke rule 11 but was sailing within the room to keep clear to which she was entitled under rule 16.1; therefore she ~~was~~ exonerated ~~by rule 43.1(b), under rule 21(a) 43.1(b).~~ *Zephyr V2.0* broke rule 16.1 by failing to give *Jalapeno* room to keep clear and compelled her to break rule 11 for which she is exonerated by rule 43.1(a).

Regarding rule 14, *Jalapeno* was unable to avoid the contact, so she did not break rule 14. *Zephyr V2.0* was able to avoid the contact, so she broke rule 14, but because she was the right-of-way boat and there was no damage or injury, she is exonerated for her breach of rule 14 ~~under rule 14(b) 43.1(e), by rule 43.1(c).~~

*Zephyr V2.0* remains disqualified for her breach of rule 16.1, but she did not break rule 15. See Appeals 117 and 120, and Case 146.

May 2019

Revised January 2021, to conform to the new exoneration rules

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## APPEAL 120

*Walloping Swede vs. Wonder*

**Rule 10, On Opposite Tacks**

**Rule 16.1, Changing Course**

**Rule 43.1(b), Exoneration**

**~~Rule 21, Exoneration~~**

**~~Rule 43.1(b), Exoneration~~**

*When a right-of-way boat changes course, her obligation to give a keep-clear boat room to keep clear ~~as required by~~ rule 16.1 begins and she must then do what is necessary to give the keep-clear boat room to keep clear. If, while the right-of-way boat is maneuvering to give room, the keep-clear boat is briefly breaking a rule of Section A, she is exonerated by rule 43.1(b), under rule 21(a) 43.1(b).*

[ diagram ]

### **Facts and Protest Committee Decision**

*Walloping Swede*, *Jam Session* and *Wonder*, three J/105s were racing upwind on a close-hauled course (position 1), *Walloping Swede* on starboard tack and *Jam Session* and *Wonder* on port tack. At position 2, *Walloping Swede* bore away to avoid contact with *Jam Session*. *Jam Session* took a penalty.

When *Walloping Swede* headed back up after avoiding *Jam Session*, she was on a collision course with *Wonder* (position 3). *Wonder* promptly put her helm over to try to keep clear of *Walloping Swede* but before *Wonder* passed head to wind, *Walloping Swede* bore away to avoid contact with her and hailed "Protest!"

The protest committee disqualified *Wonder* for breaking rule 10. *Wonder* appealed.

### **Decision of the Association Appeals Committee**

The Yacht Racing Association of San Francisco Bay Appeals Committee decided that at position 2, *Wonder* was keeping clear of *Walloping Swede* because on the course she was sailing, *Walloping Swede* could continue to sail that course with no need to take action to avoid *Wonder* (see the definition Keep Clear). At position 3, when the boats became on a collision course, *Wonder* promptly put her helm over and made every effort to keep clear of *Walloping Swede*. Despite *Wonder*'s efforts, *Walloping Swede* needed to change course to avoid contact with *Wonder* (positions 3-4)

When *Walloping Swede* luffed back up to a close-hauled course after passing astern of *Jam Session*, her change of course required her to give *Wonder* room to keep clear under rule 16.1. By bearing away and avoiding *Wonder*, *Walloping Swede* complied with her obligation to give room. And although *Walloping Swede* needed to take action to avoid *Wonder*, *Wonder* was sailing within the room to keep clear to which she was entitled ~~by~~ ~~under~~ rule 16.1. Therefore, though for a brief time *Wonder* was failing to keep clear ~~as required by~~ ~~under~~ rule 10, she is exonerated for her breach of rule 10 ~~by rule 43.1(b), -under rule 21(a) 43.1(b).~~

The YRASFB Appeals Committee reinstated *Wonder* to her finishing position, and requested confirmation or correction of its decision from the Appeals Committee, under rule 70.2.

### **Decision of the Appeals Committee**

The decision of the YRASFB Appeals Committee is confirmed for the reasons it gave. See Appeals 117 and 119, and Case 146.

May 2019

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## **QUESTION 121**

*Interpretation Requested by the Menantic Yacht Club*

**Rule 85.1, Changes to Rules****Rule 87, Changes to Class Rules**

*Adding to a rule is a change to that rule.*

**Assumed Facts**

The class rules for a World Sailing Class include the following rule: “The sail shall be supplied only by the Builder.”

There is no statement in the class Constitution or class rules either allowing or prohibiting changes to the class rules by a fleet, and the class association has not given the fleets permission to change the class rule.

There are sails of equal quality available from other suppliers for about half the price.

**Question**

May the Menantic Fleet’s sailing instructions add to the class rule and allow the use of sails for its fleet’s races by suppliers other than the Builder?

**Answer**

No. The class rules require the sail to be supplied by the Builder. Rule 85.1 says, “A change to a rule includes any addition to it or deletion of all or part of it.” Therefore adding to the class rule is a change to that rule.

Rule 87 allows the notice of race ~~or the sailing instructions~~ to “change a class rule only when the class rules permit the change, or when written permission of the class association for the change is ~~displayed~~ posted on the official notice board.” Since the class rules do not allow the change, the change can be made only with written permission from the World Sailing Class.

July 2019

Revised January 2021, to conform to the change in rule 87

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**APPEAL 122**

*Sail 6 vs. White Flag and Gold Flag*

**Rule 61.1(a), Protest Requirements: Informing the Protestee**

*The “first reasonable opportunity” to hail “Protest” is the first reasonable time after an incident when a boat is able to hail “Protest,” which is usually immediately.*

**Facts and Decision of the Protest Committee**

*White Flag (X) and Gold Flag (Y) were approaching the starting line to start. Approximately four seconds before the starting signal, X and Y had contact. Sail 6 (Z), who was two lengths behind X and Y, immediately hailed for someone to do a*

penalty. When neither boat took a penalty, Z hailed that she would protest both boats if neither took a penalty. Approximately 15 seconds after the incident Z hailed “Protest *White Flag* and *Gold Flag*.”

The protest committee decided the protest was valid, claiming that Z had to wait until she was reasonably sure that neither X nor Y were going to protest or take a penalty~~exonerate themselves~~ after the contact occurred. It believed this was “reasonable” and therefore within the interpretation of “first reasonable opportunity” as required in rule 61.1(a). It disqualified X, who appealed.

#### **Decision of the Appeals Committee**

The second sentence of rule 61.1(a) required Z to hail “Protest” “at the first reasonable opportunity” which means the first reasonable opportunity after the incident. We note that the requirement is the same whether the protesting boat is involved in, or merely saw, the incident. No additional time is permitted for a protest by a boat that was not involved in the incident.

The phrase “first reasonable opportunity,” as that phrase is used in rule 61.1(a), means the first time it is practicable for a boat to hail “Protest;” i.e., when the boat is able to hail. Because hailing “Protest” is relatively easy, there are few reasons that will justify a delay. The first reasonable time a boat is able to hail “Protest” is usually immediately (see Appeal 61).

In this case, Z made three hails. Although she used the word “protest” in her second hail, the word “protest” was used in a sentence that did not convey the meaning “I intend to protest.” Her hail “Protest” approximately 15 seconds after the incident, with no mitigating circumstances that prevented a hail of “Protest” from being made much sooner, is later than the “first reasonable opportunity” to make the hail. Therefore Z did not comply with the hail requirement in rule 61.1(a) and the protests against X and Y are invalid. The hearing should have been closed (see rule 63.5, Validity of the Protest or Request for Redress).

*White Flag*’s appeal is upheld, the hearing is voided, and *White Flag* is reinstated in her finishing place in the race.

We note that if Z had complied with rule 61.1(a), she would not have been required to file her protest. She might decide not to file if one of the protested boats took a penalty or if one of the protested boats hailed “Protest” to the other boat. However, Z must comply with rule 61.1(a) in order to preserve her ability to file a valid protest later.

July 2019

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### **QUESTION 123**

*Interpretation Requested by the Bahia Corinthian Yacht Club*

**Rule 19.1, Room to Pass an Obstruction: When ~~This Rule 19.1~~ Applies**

## **Rule 19.2, Room to Pass an Obstruction: Giving Room at an Obstruction**

*An interpretation of the terms “at,” “side” and “inside/outside” as used in rule 19.*

[ diagram ]

### **Question 1**

Rule 19.1 applies between two boats “at” an obstruction. When are boats “at” an obstruction?

### **Answer 1**

Boats are “at” an obstruction when the obstruction is influencing the course of one or both of them.

### **Question 2**

Does the word “side” in rules 19.1(a) and 19.2(a) refer to the side of the obstruction or the side of the boat?

### **Answer 2**

In each of those rules, “side” refers to the side of the boat, either port or starboard.

### **Assumed Facts**

Boat W is running on starboard tack parallel to a breakwater which is about one length away on her starboard side. Boat L is on starboard tack, to leeward and overlapped with W, and approaching the breakwater. Boats W and L are on a collision course.

### **Question 3 (Situation 1)**

If L is broad reaching and approaching the obstruction as shown in the diagram for Situation 1, does rule 19 apply; and if so, which boat is the “outside boat?”

### **Answer 3**

Because the wall is influencing W’s ability to keep clear of L, the boats are “at” the obstruction as that term is used in rule 19.1. Therefore, rule 19 applies.

Because L, the right-of-way boat under rule 11 (On the Same Tack, Overlapped), is choosing to pass the obstruction on her starboard side, a boat overlapped with her on her starboard side is an “inside boat.” Therefore, W is the “inside boat” and L is the “outside boat.”

### **Question 4 (Situation 2)**

Does the answer to Question 3 change if L is close-hauled approaching the breakwater as shown in the diagram for Situation 2?

### **Answer 4**

Yes. Because L, the right-of-way boat, is choosing to pass the obstruction on her port side (see rule 19.2(a)), a boat on her port side is an “inside boat” and a boat on her starboard side is an “outside boat.” Therefore, W is the outside boat and must

give L room between her and the obstruction ~~as required by~~ rule 19.2(b) as well as keep clear of her ~~as required by~~ rule 11.

**Question 5** (Situation 3)

Does the answer to Question 3 change if L is approaching the breakwater at a ninety degree angle to it?

**Answer 5**

Yes. Rule 19.2(a) gives L the right to choose to pass the breakwater on her port side or on her starboard side. No rule requires L to inform W of her choice. At the moment shown in the diagram, L's course is directly at the obstruction (ninety degrees to it), and it is not possible to determine whether she is an "inside" and or an "outside boat" (see Appeal 97). Rule 19 applies, but while L continues on that course no part of rule 19 creates any obligations on either boat. Rule 11 still applies and requires W to keep clear of L.

At some time after the moment shown in the diagram it will be necessary for L to either luff or bear away to avoid colliding with the breakwater. If L bears away, then the answer to this question is the same as Answer 3. If L luffs, then the answer to this question is the same as Answer 4.

January 2020

Revised January 2021, to clarify Answer 1

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**APPEAL 124**

*Mofongo vs. Fuzzy Logic*

**Rule 61.1(a), Protest Requirements: Informing the Protestee**

*A protest flag flown 10–15 seconds after an incident, when a member of the crew is able to retrieve and display the flag in that time and acts to do so, is consistent with displaying the flag at the "first reasonable opportunity."*

**Facts and Decision of the Protest Committee**

*Mofongo* (S) and *Fuzzy Logic* (P), two 20-foot keelboats, were sailing upwind in light air with no other boats nearby and were approaching each other on opposite tacks. S bore away to avoid contact with P. S immediately hailed "Protest" and the crew promptly acted to retrieve the protest flag and display it. The flag was displayed 10–15 seconds after the incident.

The protest committee decided that the flag was displayed at the first reasonable opportunity after the incident as required by rule 61.1(a). P appealed that decision claiming that the "first reasonable opportunity" to display a protest flag on boats sailing in open water in light wind should be interpreted as "immediate," within three to five seconds. P further claimed that when an on-the-water alternative penalty is available, protested boats should have immediate and complete

notification of a boat's intention to protest, and that 10–15 seconds is too much time and distance sailed to be considered the “first reasonable opportunity” to display the flag.

### **Decision of the Appeals Committee**

Rule 61.1(a) uses the phrase “first reasonable opportunity.” The word “immediate” does not occur in that rule. Whereas it may be reasonable for a boat to hail “Protest” immediately after an incident (see Appeal 122), it is just as reasonable for it to take a little time for a crew to retrieve and then display a protest flag. Furthermore, while it is possible to store a flag such that it could be displayed immediately, rule 61.1(a) does not require it. On the other hand, it is also possible to store a flag in such a way that the delay required in retrieving it would not be reasonable.

A protest flag flown 10–15 seconds after an incident when a member of the crew is able to retrieve and display the flag in that time and acts to do so is consistent with displaying the flag at the “first reasonable opportunity.” See also US Sailing Appeals 46, 67 and 82.

P claims that when an on-the-water alternative penalty is available, protested boats should have immediate and complete notification of a boat's intention to protest. We note that rule 44.2, One-Turn and Two-Turns Penalties, requires a boat intending to take a penalty to get well clear of other boats “as soon after the incident as possible” and then promptly make her turns, and that rule 44.3, Scoring Penalty, requires a boat to display a yellow flag “at the first reasonable opportunity after the incident.” These rules do not provide time for a boat to wait until she hears the word “Protest” and/or sees a red flag displayed before taking her penalty.

A boat that does not take her penalty in accordance with rules 44.2 or 44.3 risks having her penalty found to be invalid. Furthermore, a boat that realizes at the time of an incident that she broke a rule and does not take her penalty not only risks having her penalty found to be invalid, she also breaks a recognized principle of sportsmanship that requires a boat that realizes she has broken a rule and is not exonerated to promptly take a penalty (see Basic Principles; Sportsmanship and the Rules; rule 2, Fair Sailing; and World Sailing Case 138, Answer 3).

P's appeal is denied. The protest committee's decision is upheld.

*January 2020*

*Revised January 2021, to conform to the change in the Basic Principle: Sportsmanship and the Rules*

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## **QUESTION 125**

*Interpretation Requested by the American Yacht Club*

**Rule 61.1(a), Protest Requirements: Informing the Protestee**

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*An interpretation of the term “incident” in rule 61.1(a), and when a boat must hail “Protest” and fly a flag (if required) when the incident is not brief.*

### **Assumed Facts**

The class rules limit the number of sails boats may carry onboard while racing. Boat X races with more sails onboard than she is permitted to carry.

### **Question 1**

Is there an “incident” associated with this breach? If yes, what was the “incident?”

### **Answer 1**

Yes. An “incident” is an occurrence. See Appeal 90. In this case the “incident” was X racing with more sails onboard than she was permitted to carry.

### **Question 2**

If Boat Y intends to protest X, what does Y need to do, and when, in order to comply with rule 61.1(a)?

### **Answer 2**

Some incidents are brief, such as many incidents involving a breach of a rule of Part 2 (When Boats Meet) or rule 31 (Touching a Mark). In those cases, if a boat intending to protest that was involved in or saw the incident intends to protest, in the racing area, the second sentence in rule 61.1(a) requires her to hail “Protest” and display a flag (if required) at the “first reasonable opportunity,” which means the first reasonable opportunity after the incident (see Appeals 82, 122 and 124).

However, some incidents go on for longer periods of time. In these assumed facts, the incident began at the preparatory signal and continued until X was no longer racing. If after the preparatory signal Y saw more sails on board X than X was permitted to carry, then Y’s protest will concern an incident then Y saw the incident in the racing area and the second sentence of rule 61.1(a) required Y to hail “Protest” and display a flag (if required) at the first reasonable opportunity, which means the first reasonable opportunity after Y first saw a portion of the incident in which she thought X was breaking a rule.

If Y first became aware of the fact that X was racing with more sails onboard than she was permitted to carry after she was back on shore after racing, then the first sentence in rule 61.1(a) required Y to inform X of her intention to protest at the first reasonable opportunity, which means the first reasonable opportunity after Y was first aware of the incident after she was back on shore.

May 2020

Revised January 2021, to conform to the changes in rule 61.1(a)

~~{ June 26 }~~

**Commented [D20]:** Rule 61.1(a) has been changed. This change reflects that change

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