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# **THE APPEALS BOOK FOR 2017–2020 SUPPLEMENT**

United States Sailing Association

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## SUMMARY OF CHANGES AND ADDITIONS

Since the *Appeals Book* was published in January of 2017, nine new Appeals and Questions have been published. They are contained in this Supplement. The following are the abstracts from each new Appeal or Question.

Appeal 114—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

Question 115 (now Case 141)—Interpretation of the term “serious” in the phrase “serious damage.”

Question 116—A boat may protest boats that are sailing in a different race

Appeal 117 (now Case 146)—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.

Question 118—Discussion on whether it is an improper action for the race committee to hail boats before the starting signal.

Appeal 119—A right-of-way boat’s obligation to give room under 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 under rule 21(a).

Appeal 120—When a right-of-way boat changes course, her obligation to give a keep-clear boat room to keep clear under 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 under rule 21(a).

Question 121—Adding to a rule is a change to that rule.

Appeal 122—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.

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### APPEAL 114

*Manx vs. Tiger Cat*

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

#### **Rule R5.4, Inadequate Facts; Reopening**

*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). *Tiger Cat* was exonerated for her breach of rule 31 (Touching a Mark) under rule 21(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 requires the appeals committee to “accept the protest committee’s finding of facts except when it decides that they are inadequate.” 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).

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

January 2017

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## **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, 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

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## QUESTION 116

*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, Protests Between Boats 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 Course) 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 3.1(a) and 3.3(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**

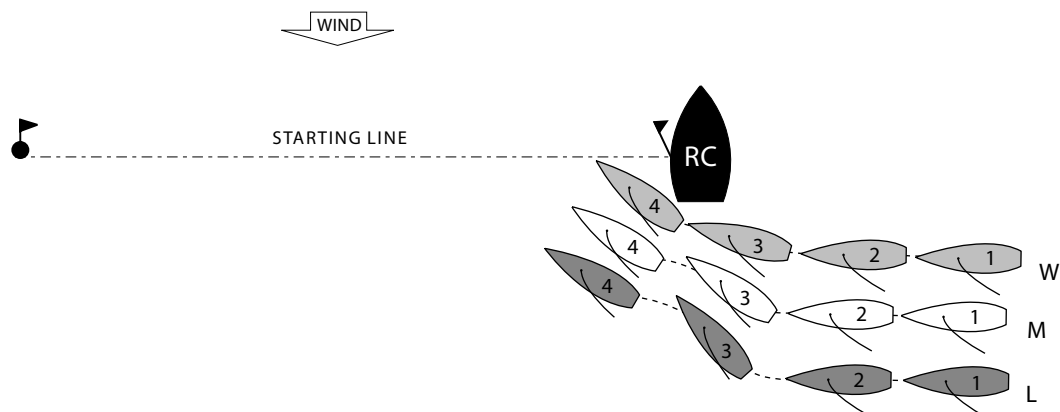
**Rule 11, On the Same Tack, Overlapped**

**Rule 16.1, Changing Course**

**Part 2, Section C Preamble**

**Rule 21, 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.*



### **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 under 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 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 under rule 16.1, they are exonerated under rule 21(a).

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.

January 2018

## 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, 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 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, 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 64.2 (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

### APPEAL 119

*Jalapeno vs. Zephyr V2.0*

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

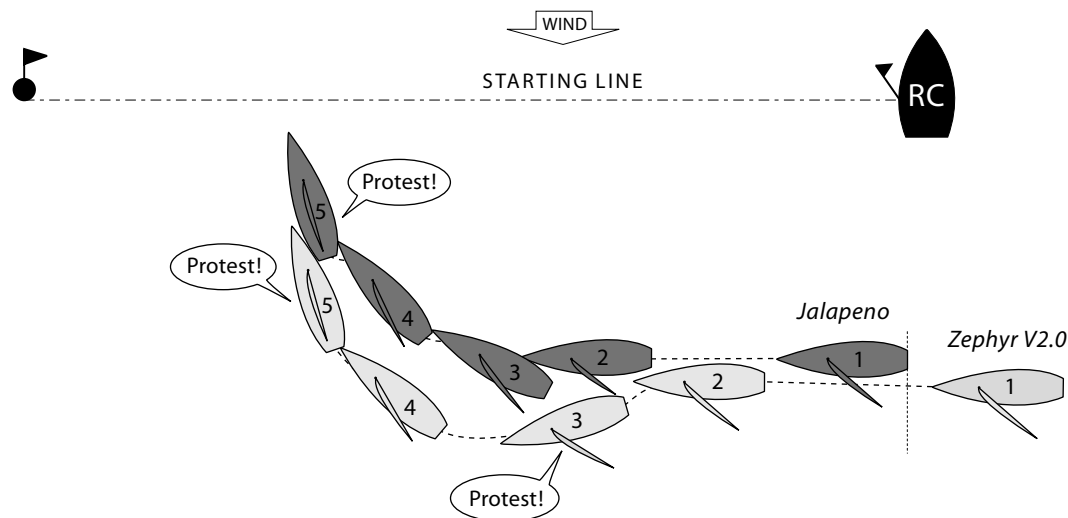
**Rule 14, Avoiding Contact**

**Rule 15, Acquiring Right of Way**

**Rule 16, Changing Course**

**Rule 21, Exoneration**

*A right-of-way boat's obligation to give room under 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 under rule 21(a).*



**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 under rules 15 and 16.1. It exonerated *Jalapeno* for her breaches of rule 11 at positions 3 and 5, under rule 21(a). It decided *Jalapeno* did not break rule 14 and that *Zephyr V2.0* did break rule 14, but it exonerated *Zephyr V2.0* 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 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 under 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 under rule 11. However, she is exonerated for her breach of rule 11, under rule 21(a), 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 is exonerated under rule 21(a). *Zephyr V2.0* broke rule 16.1 by failing to give *Jalapeno* room to keep clear.

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).

*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

## APPEAL 120

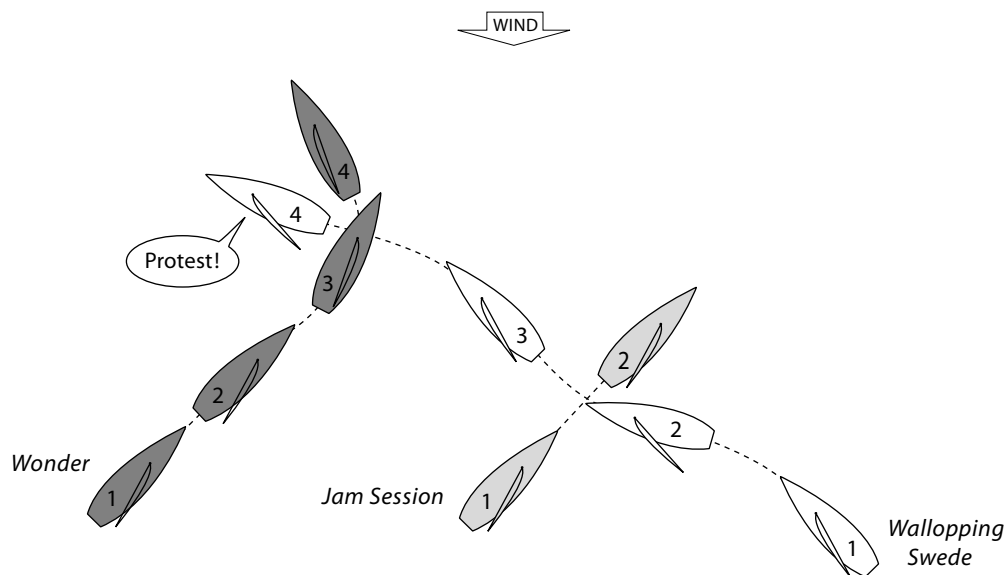
*Walloping Swede vs. Wonder*

**Rule 10, On Opposite Tacks**

**Rule 16, Changing Course**

**Rule 21, Exoneration**

*When a right-of-way boat changes course, her obligation to give a keep-clear boat room to keep clear under 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 under rule 21(a).*



### 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 *Wallopig Swede* because on the course she was sailing, *Wallopig 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 *Wallopig Swede*. Despite *Wonder's* efforts, *Wallopig Swede* needed to change course to avoid contact with *Wonder* (positions 3–4)

When *Wallopig 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*, *Wallopig Swede* complied with her obligation to give room. And although *Wallopig Swede* needed to take action to avoid *Wonder*, *Wonder* was sailing within the room to keep clear to which she was entitled under rule 16.1. Therefore, though for a brief time *Wonder* was failing to keep clear under rule 10, she is exonerated for her breach of rule 10, under rule 21(a).

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 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

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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 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*