Racing Rules of Sailing

New Appendix X, Arbitration

A submission from US Sailing

Purpose or Objective

To provide standard rules for the use of arbitration, which has become widely used in recent years in many events around the world.

Proposal

Insert new Appendix X as follows:

**APPENDIX X**

**ARBIRTRATION**

This appendix applies only if the sailing instructions so state.

Arbitration adds an extra step to the protest resolution process but can eliminate the need for some protest hearings, thus speeding up the process for events in which many protests are expected. Arbitration may not be appropriate for all events as it requires an additional knowledgeable person to act as the arbitrator. Further guidance on arbitration can be found in the ISAF International Judges Manual, which can be downloaded from the ISAF website.

X1 POST-RACE PENALTY

(a) Provided that rule 44.1(b) does not apply, a boat that may have broken one or more rules of Part 2 or rule 31 in an incident may take a Post-Race Penalty at any time after the race until the beginning of a protest hearing involving the incident.

(b) A Post-Race Penalty is a 30% Scoring Penalty calculated as stated in rule 44.3(c). However, rule 44.1(a) applies.

(c) A boat takes a Post-Race Penalty by delivering to the arbitrator or a member of the protest committee a written statement that she accepts the penalty and that identifies the race number and where and when the incident occurred.

X2 ARBITRATION MEETING

An arbitration meeting will be held prior to a protest hearing for each incident resulting in a protest by a boat involving one or more rules of Part 2 or rule 31, but only if each party is represented by a person who was on board at the time of the incident. No witnesses will be permitted. However, if the arbitrator decides that rule 44.1(b) may apply or that
arbitration is not appropriate, the meeting will not be held, and if a meeting is in progress, it will be closed.

X3 ARBITRATOR’S OPINION

Based on the evidence given by the representatives, the arbitrator will offer an opinion as to what the protest committee is likely to decide:

(a) the protest is invalid,
(b) no boat will be penalized for breaking a rule, or
(c) one or more boats will be penalized for breaking a rule, identifying the boats and the penalties.

X4 ARBITRATION MEETING OUTCOMES

After the arbitrator offers an opinion,

(a) a boat may take a Post-Race Penalty, and
(b) a boat may ask to withdraw her protest. The arbitrator may then act on behalf of the protest committee in accordance with rule 63.1 to allow the withdrawal.

Unless all protests involving the incident are withdrawn, a protest hearing will be held.

Current Position

None. Appendix X is new.

Reasons

Arbitration has been widely used for at least twenty years as a way to reduce the number of protest hearings at an event and to provide a less formal forum in which sailors can present their cases. Despite this, there is no mention of arbitration in the rulebook, so regattas wishing to use it must copy other regattas’ sailing instructions or invent their own systems. This submission contains an appendix that can be invoked by sailing instructions. Though it can be modified by those sailing instructions, it will encourage a uniform standard for arbitration worldwide.

The proposed appendix is based on an appendix that US Sailing included in its 2013 rulebook. The rules in that appendix have been successfully used in the United States since January 2013.

There are several features of arbitration that are not detailed in the proposed appendix. For example, there is no guidance about how the arbitrator should decide that an issue cannot be resolved through arbitration, nor is there guidance on whether, if a protest hearing is held following an arbitration meeting, the arbitrator should attend the hearing. Such guidance and standards are more appropriately located in, and can currently be found in, official manuals such as the ISAF International Judges Manual.

One feature of the submission is a 30% Scoring Penalty available to a boat that decides she may have broken a rule of Part 2 or rule 31 in an incident to which the conditions of rule 44.1(b) (that is, injury or serious damage or gaining an advantage) do not apply. The normal process for such a decision is for a representative of that boat to attend an arbitration meeting and be informed that
the arbitrator thinks a protest committee would disqualify her. But there could be other ways in which she learns she was wrong in the incident -- for example, someone on her crew might read the appropriate section of the rulebook and come to that conclusion. In such cases there is no need to arbitrate the issue. The submission offers such boats a 30% penalty at any time after the race until a protest hearing on the incident begins. However, to maintain some control over the process, the submission also requires that the request for the penalty be in writing and be presented to a member of the protest committee or the arbitrator. That person can determine quickly whether the penalty is appropriate.

This submission proposes that the Post-Race Penalty be a 30% Scoring Penalty. That penalty has been widely used over the past two years in the US. However, prior to 2013 a 40% Scoring Penalty was often used, and that too was accepted. The ISAF Racing Rules Committee can amend the proposal if it prefers some penalty other than a 30% Scoring Penalty.