

EDITORS NOTE: This comes with a sidebar story on examples of changing rules throughout the America's Cup. See cheating side.

## HE WHO HAS THE CUP RULES THE WAVES

By: Bill Koch

Skipper of America3 and America's Cup Winner

AUCKLAND, NZ – As an America's Cup veteran, I realized that winning the “Auld Mug” required just as much skill negotiating the back rooms of yacht clubs as it did the wind shifts on the race course. So I couldn't help but smile when I heard Peter Blake tell ESPN back in 1995 that if New Zealand won the America's Cup, he intended to clean up the rules. Good for him, I thought. It was about time the windows were opened and the light shined on how the rules of the game are decided.

“We're going to make sure the rules are fair for both sides,” Blake told the sports network. “If there is a disadvantage and it is slightly on the defense side of things, so be it. We're going to make it fair.”

But have Blake and company made the America's Cup fairer? It depends on whose defining fair: the challengers or Blake. When asked if Blake had made the playing field level, Dennis Conner, skipper of Stars and Stripes quipped: “Well, maybe he spends a lot of time in the Alps and he thinks the Alps are level.”

To be fair, the real problem is not Blake or Team New Zealand, but a nettlesome little document called “The Protocol,” the legal document governing the America’s Cup. Unlike most legal parchment, which sets things down in black and white, “The Protocol” always changes. We can thank the New York Yacht Club for that. They are the group who allowed the winner of the Cup, through proxy, to determine the rules.

Judging from the rule changes made for this America’s Cup, Blake and Alan Sefton, the executive director of TNZ, have carved out a nice advantage.

In a brief interview, Sefton admitted there were problems with staging an America’s Cup, but defended his team’s performance to date. “What we found in New Zealand is that Kiwis fall over backwards to be scrupulously fair,” he said. “We work here with the Challengers of Record to improve the event. First is the Protocol, which we borrowed quite a lot from the San Diego Protocol. We took from the mix anything found inequitable. It is not yet close to perfect but heading in the right direction.”

On the surface, TNZ has made the rules about measurements, sea conditions, National Eligibility, reconnaissance, yacht modifications, and weather conformance the same for both challenger and defender. They have also made two significant changes: a covenant not to sue over any disagreement and an arbitration panel to resolve disputes.

But like all legal documents, it’s the fine print that counts. The five-member arbitration panel is a good example. Team New Zealand selects two members who “have a significant interest in the dispute.” Two other members are selected by the New York Yacht Club, the challenger of record for this America’s Cup. The fifth arbitrator is picked together. TNZ has two votes. But Prada has no choice in the selection. The advantage goes to New Zealand.

Another subtle change requires Prada to declare and unveil the yacht it will use in the Cup on January 15, before the end of the Louis Vuitton challenger series. Once unveiled, Prada can no make no alterations. Team New Zealand, on the other hand, unveiled two of its boats, but selected NZL 60 a week before the race. They gained 30 days to test which boat would be most competitive with Prada.

Ironically, Blake complained when this happened to him in San Diego, arguing that Stars and Stripes had been given an unfair advantage. “Conner has been allowed to unveil one but now use another, which is hardly what everyone understood to be the rule when they enter the event and accepted the Protocol and mutual contentions,” he said.

Perhaps the biggest change to “The Protocol” that favors TNZ is “the limitation on sail.” Simply put, challengers are only allowed 60 sails. That includes three round robins, a semi-final and the final for the Louis Vuitton challenger series as well as the America’s Cup race for a total of 59 races. TNZ is allowed to use 30 sails for nine races. What does this mean? Sails are the engines on any yacht. A new engine is more powerful than a used one. Prada shows up with used sails to compete against a boat with new ones.

In past America’s Cup races, it was customary for the challenger to receive assistance from the runner-up before racing the defender. This would mean that Paul Cayard, skipper of AmericaOne, could give advice, manpower, sails and equipment to Prada. A recent rule change by TNZ, however, has forbidden all cooperation between challengers. Once again, the advantage goes to TNZ.

Many of the racing experts have conceded Prada is faster in lighter air. In the Louis Vuitton finals, both AmericaOne and Prada met with the race committee and agreed not sail if the wind conditions were below six or above 18 knots. Cup protocol

requires that the Royal New Zealand Yacht Squadron, the host club, pick a new race committee for the finals. And TNZ has left the wind conditions solely up to the discretion of the committee.

Some challengers such as Conner, questioned whether Harold Bennett, the committee head, can be objective since he taught many of the Kiwi's how to sail. He believes the committee will hold off in light air, giving TNZ an advantage.

“Don't count on many races starting between 12 or 13 true,” he said, referring to the wind speed. “The wind will be very flaky out there and when Russell [Coutts] sails by the race committee boat with his thumbs up and it's more than 35 true, the race is gonna go off.”

TNZ has secured another advantage that could diminish Prada's perceived speed. Blake and company have managed to reserve the right to select one of three general areas for the race course two and half hours before the start. Obviously, TNZ can select a tract that has wind favorable to their boat. The advantage is clearly to TNZ.

Many of the challengers feel that TNZ has put them at a disadvantage by omitting things from the Protocol. Dawn Riley of America True, Tom Ehman of AmericaOne and Bill Trimble of Stars and Stripes all claim that AC 2000, headed by Blake and Sefton, deliberately delayed signing a TV deal in order to impede the challenger's fundraising efforts. Before donating money, a sponsor wants to know the size of the audience the syndicate can reach. TNZ kept ESPN dangling for months on end, long after they had secured their own sponsors. “The Kiwis moved at glacial speed,” said Gary Jobson of ESPN.

Pushing the rules to favor the defender comes as little surprise to America's Cup veterans. Halsey Hereshoff, a veteran of four America's Cup campaigns and head of the America's Cup Hall of Fame, said it is all part of the contest. "We did it in Newport, they will here," he said of the Kiwis.

Indeed, abuse and bending of the rules is part of the fabric of the America's Cup. The New York Yacht Club raised it to an art form, managing to bend the rules enough to keep the Cup for 132 years. Do I think it's fair? No. But I realized it is part of the spoils that come with winning the America's Cup. The control of the event is as attractive to the challengers as the glory of winning. It not only means ongoing seductive public attention but also huge amounts of money.

During the ESPN interview in 1995, Blake just about admitted it. The San Diego Yacht Club had convened a rules committee meeting and decided that the challenger had to pick their race boat a month before the defender. Their decision put New Zealand at a disadvantage because it gave Conner's team an opportunity to adjust their boat. When asked about the ruling, Blake shrugged his shoulders. "I think what they've done is fair because they got away with it," he said.

My hats go off to Peter and Alan. You are playing the game better than the New York Yacht Club and getting away with it.

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