

**Point X** is determined the usual factors which could affect a boat's ability to avoid contact. Factors such as the positions, speeds, manoeuvrability, and relative geometry of the two boats and environmental conditions. **Point X** could be several boat lengths apart say, in the case of large keel boats for example. For two Optimists on the other hand, **Point X** could occur much later, due to their super controllability.

**Point X** is not determined by any other measures such as intention or anticipated actions or desired routes of either boat. It is not determined any acceptance of responsibility or waiving of rights.

Communications begin with a 'Tack or Cross?' question by Paula when the boats are far apart. The question could be a gesture, a hail or both.

Sally may change her course or even her entire strategy, bound only by RRS16.1 and 14. Nothing prohibits Sally from adjusting her routing as she desires. She can stand-on requiring Paula to tack, she can tack away from Paula or bear away to pass behind Paula so long as she complies with those rules.

In our 'Tack and Cross' scenario, it's during this period that Sally indicates her plans to bear away and pass behind Paula. If Sally had made that bear away move prior to **Point X**, her decision to pass behind Paula would not mean that Paula broke RRS 10 or that Sally broke a rule by letting her through.

In our scenario however, she leaves it too late. She bears away after **Point X**.

#### Everything Changes at Point X

A boat cannot be relieved from her obligation to keep clear. Particularly not because of discussion or negotiation on the water with the other boat involved. Such an interpretation is unworkable and possibly dangerous framework of rules.

'Right-of-Way' is not given to a boat, and so it cannot be taken away or waived. Sally's right-of-way is only a pseudo 'right' borne out of Paula's obligation to keep clear. Sally's indication to Paula that she will pass behind (or that Paula should

continue to cross) can never be construed as an assumption of risk or a waiver of rights.

Simply put,

***...if the boats reach Point X, then Paula has failed to keep clear and has broken RRS10.***

Any communications, intentions or prior agreements between the boats are irrelevant at **Point X**. It doesn't matter that Sally may have 'invited' Paula to cross. Nor does it matter whether Sally was aggrieved at all. It is irrelevant that Sally was still planning (and was still able) to duck and avoid contact after **Point X**.

Again, when **Point X** was reached Paula failed to keep clear and broke RRS 10.

Lastly here, it is important to note that it is very plausible that Sally and Paula reach **Point X** without any cause for concern or need for emergency manoeuvres. Again, that's irrelevant.

#### A Right to Protest and Grounds for Protest

RRS 60.1 allows any boat 'who saw an incident' to allege a rule breach with a protest. A disgruntled 3<sup>rd</sup> party who may believe that Paula gained an advantage over her by failing to keep clear is entitled to allege a breach of RRS 10 and protest, despite not being directly involved in the incident.

Like in most 'keep clear rule' protests, the protestor would have to establish that **Point X** was reached. She would have to prove that without Sally's action, contact would have occurred.

This is probably easier said than done particularly if Paula and Sally had mutually agreed on the circumstances of the cross (question asked and waved through), meaning they would likely provide matching testimony that **Point X** was never reached.

However, a jury must be disciplined enough to consider the actual physical relationship between Paula and Sally when considering whether Paula kept clear, rather than the agreements or intentions of the two boats.