Abstract - The International Regulations for Preventing Collisions at Sea, 1972 [72COLREGS] provide the standard by which every description of water craft is to be operated on COLREGS waters. In many instances the COLREGS, or The Rules as they are more commonly known, are the standard to which various appropriate authorities around the world have created their own special rules for the waters under their jurisdiction, an example being the Inland Rules of the United States. According to Rule 2 of both the COLREGS and U.S. Inland Rules, “Nothing in these Rules shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to comply with these Rules . . . “ That fiat is a worthy and uncompromising objective designed to ensure that all vessels, commercial, public or private, are operated in accordance with the mandates of The Rules. The underlying corollary, however, is that The Rules are unambiguously clear and understood by all who operate vessels; unfortunately, that is not always the case. The Rules as presently written are not perfectly clear and in various places are confusing, ambiguous and even contradictory. Such uncertainty is frustrating enough for the professional mariner, to say nothing of the consternation experienced by the student or recreational mariner. But what is of overwhelming and paramount concern is the danger posed by the various uncertainties contained in The Rules which could lead to collisions, loss of life, pollutions and other undesirous results. This paper highlights some of the uncertainties and inconsistencies contained in The Rules as presently written and suggests changes that are intended to make The Rules clearer and easier to understand by the mariner (professional, recreational or student) as well as by members of the legal profession.

1. Introduction

- It is in the best interests of every inhabitant of our planet that vessels be operated as safely as is possible on the waters upon which we all depend. One critical aspect of such concern is the prevention of collisions and allisions, loss of life, pollutions, etc. and to this end the international maritime community has agreed upon a code of conduct embraced in the International Regulations for Preventing Collisions at Sea, 1972 [72COLREGS]. For almost two centuries the signatory nations have endorsed and enforced these and prior similar regulations, one of the earliest examples of international cooperation of which the maritime community can take great pride!

To ensure that the safe operation of vessels is achieved, mariners must be taught (and comply with) The Rules and, as stated in Rule 2 of those regulations, “Nothing . . . shall exonerate any vessel . . . from the consequences of any neglect to comply with these rules . . . “ However, in order for the mariner to comply correctly, the meaning and intent of The Rules must be perfectly clear and unambiguous which, unfortunately, is not always the case.

In many instances The Rules are confusing, inconsistent or contradictory. This is troublesome enough for those conversant in English, but it is especially vexing and difficult for the majority of the world’s mariners whose native language is not English. Therefore, if the maritime community is going to hold the mariner to the high and unalterable standard of Rule 2 . . . that is, that nothing exonerates the mariner from non-compliance with The Rules . . . then it is incumbent upon the maritime community to ensure that what is meant and intended by those very same Rules be absolutely and incontrovertibly clear to all concerned!
The vast majority of vessels encountered out on the water today are not operated by professional mariners, yet the courts of law are going to hold these same individuals to the high standards of Rule 2; therefore, it is imperative that The Rules be presented in clear, unambiguous language in such a way as to be absolutely clear to every reader, whether they be judge, attorney, student, recreational boater or professional mariner.

To that end, this paper will highlight some of the confusing, ambiguous and contradictory aspects of the COLREGS as presently written and offer suggestions for resolving the shortcomings noted in order to facilitate both the teaching and the learning of this most important aspect of overall maritime training.

2. Examples of Confusion and Suggested Remedies

Rule 1. The very first paragraph of The Rules [i.e., Rule 1(a)], commences with an unintentionally misleading statement: “These Rules shall apply to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels.” Since every sovereign nation (and any other appropriate authority) has the right to make its own Rules for its own waters, as a stand-alone statement Rule 1’s paragraph (a) is just not true and is very confusing to the average reader, especially students. This confusion can easily be eliminated (as was made clear in The Rules previous to the 72COLREGS by the use of the word “except”) by adding at the end of the present wording of Rule 1(a) the phrase “except as provided in Rule 1(b).” By doing so the intent of Rule 1(a) is made perfectly clear.

One of the questions most frequently asked by students relates to lights and shapes, and is generally stated in a manner such as this: May vessels exhibit signals in addition to those specifically required? Such uncertainty could easily be resolved, for each and every rule, by inserting a paragraph in Rule 20 similar to that which presently appears in Rule 26, Fishing Vessels. Rule 26(a) states, “A vessel engaged in fishing . . . shall exhibit only the lights and shapes prescribed in this Rule”. A similar assertion in Rule 20, “Application” [of Part C - Lights and Shapes] . . . for example, an additional paragraph reading, “The vessels of the categories addressed in Part C shall exhibit only the lights and shapes prescribe in Rules 23 through 31” . . . would eliminate any uncertainty.

Another source of confusion is the use of the phrase “in a vertical line” (especially when pertaining to a power-driven vessel when towing [PDVWT]). To the professional mariner it is clear that the rule (24) intends for the masthead lights, which specifically indicate a towing operation, be mounted directly above or below each other; that is on the same supporting structure or the same vertical axis. However, for the student or non-professional, this vague wording is problematic because that which constitutes a “vertical line” depends on one’s aspect of view and can be very misleading. For instance, when viewed from dead ahead a power-driven vessel [PDV] exhibiting both a forward and an after masthead light appears to be exhibiting, “in a vertical line”, the same arrangement of masthead lights as a PDVWT that is less than 50 meters in length exhibiting both masthead lights on the same supporting structure which, of course, is not the case at all. It is suggested that wherever the phrase “in a vertical line” occurs it be replaced by the words “in the same vertical axis”.

3. Examples of Ambiguities and Suggested Remedies

Throughout The Rules, there is no greater source of ambiguity or consternation than the use of the word “restricted” (or its variants) because its specific meaning and/or interpretation is dependent on the topic of the particular rule or the context of the conversation in question. Since the use of the word is so prevalent, the number of suggestions that would be required for clarifying each appearance goes far beyond the scope of this paper. Suffice to say, however, that an expansion of the Interpretive Rules chapter of the COLREGS may offer the most efficient method for providing the precise interpretation to be made of the word “restricted” each time it appears.

Rule 3 - Definitions, contains several ambiguities. For example, both 3(f) and 3(g), which define vessels not under command [VNUC] and restricted in ability to maneuver [VRIATM] respectively, state that
the vessels in question are “unable to maneuver” which, of course, is not necessarily the case at all; such an inaccurate blanket statement is the cause of much confusion, consternation and frustration, especially among students.

For example, the VNUC: To begin with, the vessel must have encountered some unplanned for or unexpected event (i.e., encountered an exceptional circumstance). In addition, unless it has actually lost its rudder or the use of its propelling machinery (and therefore cannot physically maneuver), addressing the actual exceptional circumstance incurred may very well require extremely accurate maneuvering on the vessel’s part. For instance, a vessel attempting to recover someone who has fallen overboard must be maneuvered very precisely in order to return to the exact spot in the water where the individual was last seen. Clearly, and contrary to what one is lead to believe as per the definition contained in Rule 3(f), this VNUC is not unable to maneuver; in fact, it must maneuver to handle the exceptional circumstance encountered.

The definition of a VRIATM presents a similar ambiguity. In carrying out the very work which justifies its claim to VRIATM status, a VRIATM may have to maneuver very precisely to perform its work. For instance, a buoy tender’s placing of a buoy requires extremely accurate shiphandling; an aircraft carrier engaged in launching or recovery of aircraft; vessels involved in underway replenishment, all classified as VRIATM, of necessity must be maneuvered with great precision and are, by no interpretation, “unable to maneuver” as stated in the Rule 3(g) definition.

To eliminate the ambiguities associated with the definitions of both VNUC and VRIATM, it is suggested that the respective definitions be reworded (as in the following bold print) to state:

3(f) – “The term vessel not under command means a vessel which through some exceptional circumstance is relieved of the maneuvering obligations of the Steering and Sailing Rules for the duration of the exceptional circumstance and, therefore, will not keep out of the way of other vessels in a traffic encounter.”

3(g) – “The term vessel restricted in her ability to maneuver means a vessel which from the nature of her work is relieved of the maneuvering obligations of the Steering and Sailing Rules for the duration of its work and, therefore, will not keep out of the way of other vessels in a traffic encounter. The term . . . shall include but not be limited to:”

“Restricted Visibility” - The lack of a clarity in Rule 3(l)’s critical definition of restricted visibility is extremely problematic. What actually constitutes the concept of restricted visibility is not clear until arriving at Rule 19 (Conduct of Vessels in Restricted Visibility) and even then clarity is due the rule’s name rather than the actual wording of the rule itself.

To ensure the correct understanding of the restricted visibility concept, its meaning should be unquestionably clear from the very outset (i.e., in its Rule 3(l) definition). Therefore, the following rewording of Rule 3(l) is suggested: “The term restricted visibility means any condition in which meteorological conditions (such as fog, mist, falling snow, heavy rainstorms, sandstorms or any other similar cause) prevent the observer from actually seeing the risk of collision.” It is extremely important that it be made crystal clear, in the simplest of terms, that the mere presence of rain or snow, etc. is not, in and of itself, sufficient to constitute restricted visibility! Rather it is the inability (due to the meteorological conditions present) to actually see the potential risk of collision that determines which of the Steering and Sailing Rules apply at any particular time and place.
4. Examples of Contradictions and Suggested Remedies

A contradiction of a subtle nature appears in Rule 9, specifically in paragraphs (d), (e) and (f). Each of these paragraphs calls for the use of various whistle signals from Rule 34. The contradiction arises from the fact thatRule 9 is contained in Section One [Rules 4-10] of the Steering and Sailing Rules and, as per Rule 4, is to be followed in any condition of visibility. However, the Rule 34 whistle signals called for in Rule 9 are to be employed only when vessels are in sight of one another; thus the signals called for by Rule 9 are not to be employed in restricted visibility and, therefore, aspects of Rule 9 do not, as per Rule 4, “apply to any condition of visibility”!

In order to counter the existing contradictions in Rule 9 and prevent any further misinterpretation of the use of the whistle signals referenced therein, it is suggested the following be added as an additional paragraph (h) to Rule 9: “The Rule 34 whistle signals referenced by this rule are to be sounded only when in sight of the other vessel and not in restricted visibility.”

There are other similar contradictions throughout the rules, but the most glaring – and potentially most dangerous – arises with Rule 8(f) which addresses the concept not to impede.

The invented concept of not impeding was introduced with the 72COLREGS without definition or explanation. It had no maritime tradition or precedence, thus mariners were at a loss as to its meaning or implications. Therefore, in order to clarify its intentions, the IMO Subcommittee on Safety of Navigation issued “guidance” as to the meaning of the concept that, in effect, stated that a vessel so burdened (i.e., ordered not to impede) should take action so early in a potential traffic encounter that risk of collision would never develop and, therefore, the responsibilities of a stand-on vessel and a give-way vessel would never evolve. Although not nearly as specific as some of the other maneuvering mandates (e.g., Rule 14, the Head-on Situation), the guidance did explain what was intended and expected of the vessel which was ordered not to impede.

However, in 1989 the IMO decided that the “not to impede” guidance should become a formal part of The Rules themselves and, therefore, as an amendment to the COLREGS, a new Rule 8(f) was added. The new rule, 8(f), was (and still is) composed of three subparagraphs (i), (ii) and (iii). Subparagraph (i) clearly explains the intention of the previously issued guidance although it does not explain what is intended by “early action”; however, the general concept is explained clearly enough for the mariner to understand the IMO’s intent. Had that been the entirety of the new Rule 8(f), few questions would have arisen; however, the additional paragraphs (ii) and (iii) are completely contradictory!

Rule 8(f)(ii) mandates that a “vessel required not to impede . . . is not relieved of this obligation . . . [when in] risk of collision and shall, when taking action, have full regard to the action . . . required by the rules of this part.” This part is Part B (The Steering and Sailing Rules), and the mandate of Rule 17 is absolutely clear stating that a Stand-on Vessel “. . . shall keep her course and speed.” Therefore the critical question arises, what if a Stand-on Vessel is also required not to impede? How, at the same time, is a vessel to comply with Rule 17 - and “keep her course and speed” - while simultaneously mandated to take action (i.e., maneuver) so as not to impede? This is a blatant contradiction; a vessel cannot Stand-on and maneuver at the same time!

The confusion generated by 8(f)(ii) is further compounded by the following subparagraph (iii) which specifically states that a “vessel . . . not to be impeded remains fully obligated to comply with the rules of this part [Part B] . . . [when in] risk of collision.” What if, as required by one of the other rules of Part B (e.g., Rule 12- Sailing Vessels, 13- Overtaking, 15- Crossing Situation or Rule 18- Responsibilities between Vessels), a vessel not to be impeded is mandated to give-way? How is it expected/required to maneuver? Or is it expected/required to maneuver at all?

At the very least the intent and/or expectation of Rule 8(f) is not clear, and it is the opinion of the author that Rule 8(f)’s second and third subparagraphs are unquestionably contradictory and, as a result, very
dangerous! Therefore, it is recommended strongly that subparagraphs (ii) and (iii) of Rule 8(f) be eliminated.

5. Conclusion

If the international community is going to hold the mariner to the worthy high standards of Rule 2 (i.e., that nothing exonerates the mariner from failure to comply with The Rules), then those same rules must be absolutely and incontrovertibly clear to the student trying to learn the rules as well as to the professional or recreational mariner! There should be no doubt whatsoever on anyone’s part as to what is required of a vessel when in risk of collision with another vessel.