

# Salvage versus Towing: The nitty-gritty details

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Notes Taken From The Presentation Given By Capt. Steve Winkler Of Seatow Boston

## Some Legal Essentials Of Salvage

- **SALVAGE** is any act or action to assist a vessel in danger in navigable waters or other waters whatsoever.
- **A SALVOR** is a volunteer.
- **A SALVAGE AWARD** does not require people to work as a salvor, but it is to encourage people and to prompt their assistance -- not plunder.
- PRE-1822 there was no agreed upon compensation.
- 1822-1989 The insurance company Lloyds of London had a standard open form contract There was an agreement to an arbitration procedure and one had to hire barristers in London.
- 1989 The US threw out the Lloyds contract if a US towing firm and a US ship was involved. Arbitration was to be by US arbitrators.

## The Blackwall Decision

1. A maritime peril of some kind must exist, subject to potential danger. Then one has to be a volunteer and under no legal or contractual duty to the owner.
2. A fire department or the US Coast Guard is not a volunteer.
3. The US Navy is or can be a volunteer, because their responding to an emergency is not a part of their primary function.
4. The volunteer must have had some success in saving all or at least part of the property
5. What SeaTow does is mostly salvage except for dock-to-dock towing.
6. **How To Determine Whether A Tow Is Actually Salvage**
7. It depends upon the degree of danger from which a boat is saved. A boat just being out of gasoline is not salvage but one that runs out of gas in the middle of a hurricane would be.
8. The skill and promptitude displayed.
9. The value of property and cargo saved and the post-salvage value after running aground.
10. The labor, material and other expenses incurred. (An \$8K boat vs. a \$150K boat would involve greatly different charges.)

## There Are Five Major Steps In A Salvage

1. Notification of problem to the customer.
2. Determination of the type of salvage, is determined by the salvor:
  - **"No cure, no pay" or pure salvage.** ("This is a salvage situation. This is what we can do." An example of this would be a boat being blown towards the rocks with no owner or crew aboard.)
  - **Fixed fee salvage** (The boat owner is told beforehand what the total cost of the salvage will be, before the salvage is started); or

- **Published rate of salvage.** The boat owner is presented with a published rate sheet showing an hourly charge for labor and per diem costs for various pieces of salvage equipment. There would be a break down for each part of the salvage work.
- 2. The details of the salvage effort. How much work was done. What resources were required. The dangers and problems involved.
- 3. Writing the report.
- 4. Final resolution. A larger salvage might take years to resolve.

### **Two Common Examples Of Salvage**

**A vessel on the rocks.** Here we have a situation dangerous for both the boater and the salvor. Much experience is needed. It involves a lot of skill being required and having and using the proper equipment, such as air lift bags to keep the bottom of the boat and propellers and shafts from being damaged more from a rising tide with waves and wakes of other boats rocking and smashing the boat bottom against rocks.

**Sunken at the docks.** Here there is a potential for damage to the marina and to nearby boats. There is also a pollution liability from leaking oil and fuel.\* This is the second largest category of work done. Often this is done on a "no cure, no pay" fixed fee basis. This work is dangerous and demanding.

*\*Today pollution, leaking and spillage are as important a financial liability as traditional salvage of cargo and hull. Do be sure to have adequate (substantial coverage) for this potential problem.*

### **The Chronology Of A Rescue Or Salvage**

For a real, bonified emergency or life-or-death situation. First the May Day: use the appropriate call to the Coast Guard or to a towing service. And you are much better off using the VHF marine radio than a cellular phone. This is because: the VHF will have a longer range; The Coast Guard can triangulate onto your signal for getting a better fix on your position; and because other nearby boaters will be made aware of your situation and could possibly respond quicker to render some assistance - or perhaps just stand-by, close to your boat in case assistance is suddenly needed.

For all other situations. Choose a towing or salvage company that you can trust. Local SeaTow or TowBoat US, are recognized companies having proper rescue equipment and their franchised owners have proper training. Be aware that a simple towing contracts do not cover salvage situations. Expect a reasonable ETA, or time of arrival to your location. Should you have a specific problem that you might want to discuss, it might be better to discuss the problem over a cell phone. As far as the Coast Guard is concerned, do not expect them to take a lead role in handling a salvage.

### **Key "Watch-Outs"**

- Make sure that you have the proper marine insurance policy that **specifically** covers salvage. Boating insurance coverage as part of a homeowner's policy generally provides insufficient coverage.
- Be sure that there is appropriate pollution control and wreck removal in your policy.
- Beware of the unscrupulous salvor. **One's boating insurance coverage generally ends in November.** Watch out for the person who says "**Don't worry, your insurance policy will cover this.**" **But how do they know what your insurance coverage is?**
  - Watch out for the person who says "Take my line, I'll pull you off."
  - Watch out for someone who insinuates that they are **affiliated** with a boating insurance or service membership.

### **The Salvage Effort The Seatow Way**

1. SeaTow will make an ethical effort to do a salvage.
2. Safety is first.
3. Minimizing damage is second.
4. Specific services are listed under membership.

#### **Initial Things To Watch Out For**

1. Select a capable, well-trained salvor, with proper equipment and qualified people.
2. Maintain your calm.
3. Help us to help you. Do listen to your rescuers.

#### **Compensation Calculation**

1. No cure no pay.
2. No cure no pay -- fixed fee.
3. Published rates. The rates are published annually. And this is great for "bean counters" in US insurance companies.
4. Do look for and get a breakdown of charges.

#### **Additional Things To Watch Out For**

- The signing of contracts.
- **Your permission is implied unless you refuse service.**
- **Denying of service can void your insurance.**
- If you are given a Lloyds contract do not sign it unless your vessel is a foreign documented vessel.
- All boats are not created equal. This provides a bonus or incentive for doing the work. Rescuing an 18 foot runabout will cost less than a 50-foot cabin cruiser. There is a significant investment in equipment, plus a significant risk to both the people performing the rescue and their equipment.
- **Final Resolution Of The Salvage Bill (The Seatow Way)**
- Seek security (\$) from the customer prior to release of the boat.
- Redelivery of certificate.
- A letter of understanding with the insurance company, that they are putting money aside for this salvage.
- Creating a detailed salvage report for both the owner and the insurance company.
- SeaTow has had significant experience in successfully resolving claims **directly** with the insurance carriers in 90% of the claims.

#### **Other Considerations**

- **First is the worth of the boat.** One must consider the total liabilities of a salvage against, for instance, the worth of an old, deteriorated wooden boat.
- **Second would be lack of insurance coverage.** This would cause a really big problem.
- Following the Federal laws of salvage, a Federal maritime lien can be placed against a vessel for doing the salvage. Then **this vessel cannot be sold prior to the resolution of a lien against it.**
- There is a two year statute of limitations for a salvor to submit a salvage lien. **Beware of exaggerations in salvage reports** such as exaggerated weather and sea conditions when it really had been calm. Our speaker puts together a list of the equipment that he used in a salvage, a log of the time spent by his employees, the amount of time that it took to do the salvage. He also takes photographs and videos.

- **Insurance companies will pay extra amounts to preclude further/later damage beyond what was initially incurred.** [For instance after a boat running aground near a heavily traveled channel receiving further hull damage from waves and wakes as the tide

**Do:**

- Have adequate insurance.
- Select a proper salvor. Know who is best.
- Understand your rights as a boat owner
- And remember that it is only a boat

**Do Not:**

- Confuse salvage with towing coverage.
- Panic and blame your crew.
- Accept services from ill-equipped "ambulance chasers." Instead accept services from established SeaTow and TowBoat US companies.
- Be ill-prepared for problems and emergencies.