



## Salvage Realities

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Who wouldn't smile at the thought of leaving port on an exquisitely designed, impeccably appointed, professionally crewed yacht on course for a grand entrance in an exotic harbor? For the sake of the image, we could suggest Edgartown, Montego Bay or Bonifacio, but, no doubt, you've already filled in your own favorite. The thought of needing marine salvage assistance does not coincide with these dreams, however, and crew must be pragmatic.

While an owner may choose to refuse salvage services when offered, a legitimate claim by a salvor, who voluntarily helped remove the boat from a maritime peril whether asked to or not, may be awarded payment. The person who helps another to safety has well-established rights deriving from the service. That is part of the great marine tradition, which recognizes that all leave port at the mercy of the elements and should be prepared to help a fellow mariner.

When things do go wrong, the specter of urgent salvage services poses a prospect akin to putting salt on an open wound. Make no mistake, salvage can be expensive. However, not responding quickly and competently may allow a bad situation to get worse, possibly much worse, leading to not only the total loss of the boat, but also loss of insurance coverage.

When needed, salvage assistance is just the medicine a doctor would prescribe to treat the emergency. Keeping in mind: a boat's owner is always obligated to act as if the vessel has no insurance. It's advisable to understand the basics of marine salvage, applicable law and how the system can protect the vessel's interest when a casualty occurs. Often, it may be wise to take the medicine.

In essence, marine salvage is clearly and simply defined as any service rendered voluntarily and successfully to remove a vessel from peril. The term does not refer to saving lives, which universally springs from a moral imperative. Rather, marine salvage is about preservation of property value. It's about services by one individual, a salvor, on behalf of the other in need, the yacht and its captain, crew, owners and/or guests. It's not "finder's keepers." Ownership and attendant obligations remain unchanged. The salvor is obligated to return the vessel to its owner, but the owner assumes an obligation

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to pay for a successful recovery. It's the captain's and the crew's job to protect the owner's interests.

When faced with a developing casualty of any kind, a boat's captain and crew are expected to take action to protect their vessel. It's their job to navigate to safety, stabilize ongoing damage and try to prevent the situation from getting worse. Captain and crew must act in the interest of saving the boat. This is not to say they are expected to "go down with ship," but rather to indicate that the crew may not claim a salvage award for doing their job.

True salvage is different from contract salvage where services are expected by virtue of a pre-negotiated arrangement or pre-existing working relationship. Typically, there is no contract defining specific terms, the salvor will expect an award based on the value of the boat upon its re-delivery, in safe condition, to the owner's custody after the completion of repairs of any damage suffered as result of the casualty event and salvage operations.

With true salvage, no written contract is necessary. It's not even necessary that a salvor be requested to salvage the vessel. The salvor does not need be a professional. A careful look at the definition shows this and also sets the condition for the provision, unique to marine salvage, no cure — no pay. The concept is driven by the recognition that vessels most often take to sea alone; the sea is an unforgiving environment and all sailors should be encouraged to respond to sister vessels in distress.

History and tradition confirm that marine salvage is to be encouraged. Salvaged value is the basis for calculating the monetary award for success. An award recognizes the salvor's efforts defined by the complexities of the circumstances, risks assumed, proficiency demonstrated, equipment employed and the degree of success realized. Salvage awards traditionally reward the successful salvor and usually exceed a simple quantum meruit: payment for time and materials expended. And lack of success means no reward.

Salvage services may not be forced on an unwilling owner. Exorbitant fees demanded of an otherwise helpless owner in the face of a deteriorating situation have not been supported in court after the fact. Although permitted to employ the casualty's resources such as crew, motor, anchors, pumps and rigging in the course of the work, the salvor can expect operational damages incurred during salvage to reduce the salvaged value and, therefore, the size of an award.

Contract salvage differs in that work is performed under negotiated terms and conditions that proscribe expected payment. When the salvor performs within those terms, all parties are aware of the payment due.

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