

KEVO'S BOATING TIPS & MORE

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On-Water Towing Service (Part 2 of 2)

Correction: My column in November '06 incorrectly stated that compass variation for the Bay Area is 15 degrees West. It is in fact 15 degrees East.

So here's the deal: You're 10 miles off the California coast heading south at 1 a.m. on your brand new \$500,000 motoryacht with a full load of fuel (400 gallons of diesel), when it rams into a telephone pole you could not see on your radar screen because it was barely floating. Next thing you know you're taking on serious water. It doesn't take long to make the decision to issue a mayday and ask for assistance on your VHF marine radio.

A tow/salvage outfit responds and makes sure there is no imminent life-threatening situation or any injuries. The answer is no. They say they can be on sight in 90 minutes. Can you stay afloat until then? Thankfully, the answer is yes. The rescuers scramble to their vessel, which is fueled and ready at a moments notice to depart 24/7/365. Help arrives and everyone onboard the stricken vessel couldn't be happier. The skipper welcomes the salvor with pen in hand. He'd sign anything right now. Just get us out of this mess!

The captain of the rescue vessel installs pumps on your vessel to keep her afloat for the long tow back to the nearest port. On the way back he radios the only haulout facility at the harbor that there is an emergency and he needs someone to haul a boat out at 5 a.m. to prevent it from sinking.

The boats arrive safely, the damaged vessel is hauled successfully and the skipper needs to change his underwear on account of all the excitement. Now the captain of the rescue vessel is busy doing paperwork and the skipper of the stricken vessel is getting out his wallet to (gratefully) pay the towing/salvage outfit for their services. He shakes the captain's hand and thanks him for coming to his rescue. The bill is \$30,000!!! (Time for another pair of undies!) How the (heck) can this be? Have you lost your mind? – the skipper asks.

Towing vs. Salvage: (Generally Speaking)

To understand the charges for a hypothetical rescue described above one needs to delve into the history of maritime law as it applies to towing verses salvage.

Historically, the only chance of survival for a vessel in peril on the high seas was the willingness of a nearby vessel to render assistance. (Many times at considerable risk to their vessel.) Countless lives and millions of dollars in cargo have been saved because another vessel was willing to go out of her

way to respond to a call for help. To reward these acts of heroism, the vessel was rewarded a percentage of the value of what was saved.

As is often the case, disagreements arose as to what was the proper reward given the particular circumstances of the rescue and the value of the cargo. To further complicate matters, many times the rescued and the rescuer were from two different countries.

Only recently has there been private contractors like Vessel Assist and Sea Tow available to recreational boaters in the U.S. The U.S. Coast Guard (generally) no longer tows recreational vessels unless there is a life-threatening situation at hand.

Many of us experienced mariners have heard horror stories about exorbitant towing fees paid by mariners in distress for simply allowing their vessels to be towed back to port. Ask any experienced harbormaster and you will get an ear full of colorful, sometimes embellished stories about towing and salvage. Unfortunately, most mariners lack basic understanding regarding what constitutes towing verses salvage; most rely on what they have heard "down on the docks" as to what the differences are.

Knowledge is the key to effectively and successfully dealing with a towing or salvage company. Knowing in advance what is at stake and your rights, obligations and options are essential to getting out of trouble on the water with your wallet and your vessel intact. There is no standard that insurance companies use to define the differences between towing and salvage. Each company maintains the right to define these terms. So, the best way to find out how your marine insurance policy covers salvage verses towing is to ask them.

Towing: (Generally Speaking)

Basically, the logic that goes into determining whether a vessel is going to be towed or salvaged is sort of backwards. It seems the "absence of peril" determines the vessel will be designated towed. Towing includes "soft" groundings, engine breakdown, dead batteries, running out of fuel and parts delivery. There can be no immediate danger to any persons onboard, other vessels, the environment or the vessel.

Towing implies that only one line from one vessel is involved in the process. Hooking up and starting to tow the stricken vessel must take less than 30 minutes to qualify as a tow. The average rate for towing services on the water is roughly \$200 per hour or about \$100 per mile towed. Tow/salvage companies can be reached on channel 16 VHF.

Salvage: (Generally Speaking)

If the vessel is "hard" aground, stranded, sinking, or on fire it is deemed in peril. Also, if there is an impending storm approaching that could be dangerous to the stricken vessel it could be deemed in peril. According to maritime law, if there is an immediate danger to the marine environment, other vessels or the vessel is in distress, the situation becomes a salvage operation not a simple towing operation. In addition, if special equipment is used for floating or pumping water out of the stricken vessel, the operation is considered a salvage operation.

There are basically four ways to enter into an agreement with a salvage outfit before they start their operations:

1. Both parties can agree in a written or oral contract (witnesses a good idea!) stating the agreed upon fee for the salvage.

2. Both parties can sign an “open form salvage agreement.” This means the fee to the salvage company will be determined at a later date when cooler heads prevail and the vessel is out of peril.

3. Both parties can agree to no contract and deal with the fees when the vessel is safely at port.

4. Both parties can sign a “no cure, no pay” agreement. This document states that the salvor will use specific equipment, an agreed upon size of crew and get the job done in a specific amount of time or forfeit compensation.

It should be noted that the salvage companies don't need a signed agreement to make a claim in Admiralty Court against the vessel. The requirements are that the salvage company proves that the salvage was voluntary, successful and that the salvaged vessel or the marine

environment was in imminent danger. This is what is called a “pure salvage.” Under these terms the salvage company retains the right to a salvage lien against the rescued vessel. If the salvage company meets these benchmarks, the court has historically generally sided with the salvor.

However, “pure salvage rights” are based on a number of legal factors including:

1. The value of the endangered vessel prior to the incident, less the cost of repairs incurred prior to and during the salvage, called “post-casualty.”

2. The efforts by the salvor to prevent or minimize further damage to the environment.

3. The character and grade of danger involved.

4. The effort and success of rescuing property and life.

5. Time, expenses and losses incurred by the salvage company.

6. The liability and risk incurred by the salvage crew.

7. The availability and effectiveness of the salvage vessels and equipment.

Kevo's Tips:

Review your insurance policy and be sure that salvage coverage is included and that the coverage is for the full value of the vessel, not a percentage, and that there is not a deductible. Confirm that wreck removal is specifically included in the liability portion of the policy and that the full cost of the removal is covered with no deductible. Always remember that you can't simply “abandon” your vessel. The owner of the vessel is ultimately responsible for the vessel and any damage it does to the environment, other vessels, levees or docks. If the boat sinks in or otherwise obstructs a navigable waterway, the Coast Guard will demand its removal. If it is not removed promptly they will remove it for you and send you the (whopping) bill and possibly a fine to go along with it! (Yikes!)

As always, feedback is appreciated. I can be reached at 925/890-8428 or kevo@yachtsmanmagazine.com

Be safe & happy boating! ⚓