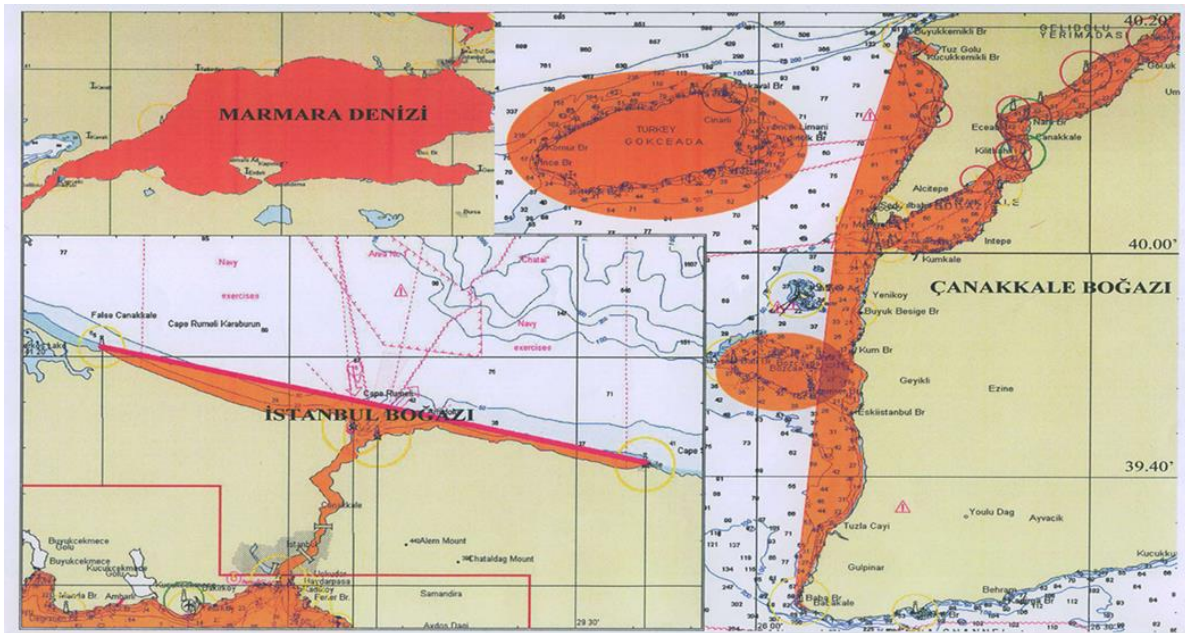


# CLAIM GUIDE FOR SALVAGE CLAIMS IN TURKISH STRAITS AND MONOPOLY AREAS

## Introduction

Salvage claims in Turkish Straits have been always a concern to hull and property underwriters where substantially high rewards are claimed comparing to the services rendered. This guide is aimed to give a detailed information for salvage claims in Turkish Straits. In order to understand the claims in Turkish Straits, how the system is operated and who the salvors are should be known.

## Monopoly Areas and Salvors in Turkish Straits



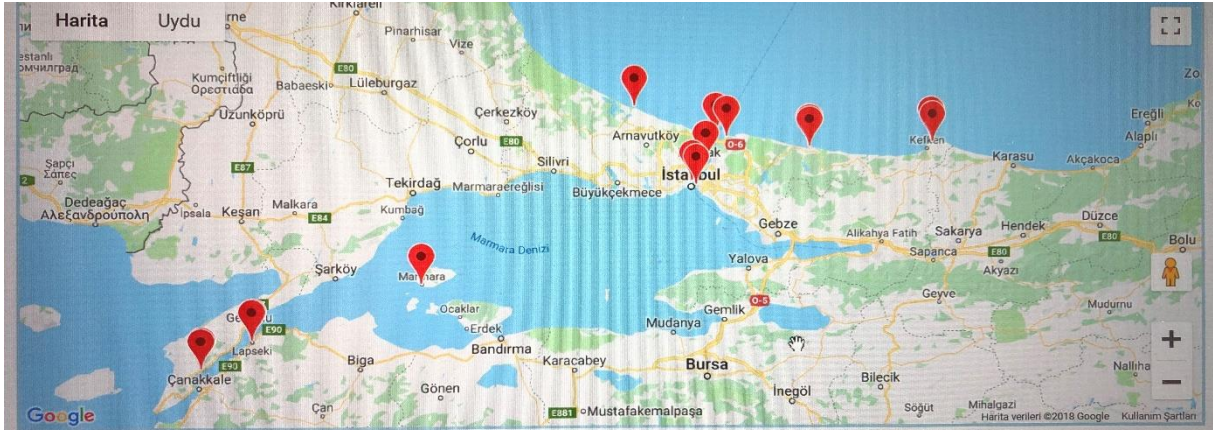
The above chart shows the monopoly areas which are granted to Kiyi Emniyeti Genel Mudurlugu (The Directorate General of Coastal Safety) for salvage services. It covers all Marmara Sea including Izmit Bay, Bosphorus and Dardanelles and also some areas in close proximity to the entrances of Bosphorus and Dardanelles.

Kiyi Emniyeti Genel Mudurlugu (The Directorate General of Coastal Safety) is a state-owned organization and they are the Salvors in Turkish Straits and the monopoly areas so that Kiyi Emniyeti Genel Mudurlugu (The Directorate General of Coastal Safety) will mean salvors in Turkish Straits. However, Kiyi Emniyeti Genel Mudurlugu (The Directorate General of Coastal Safety) is not just a salvage company. It is a large company with extensive personnel, sea and land vehicles and equipment where in addition to the salvage services, they are responsible for

- Pilotage in Turkish Straits
- Towage and Escort

- Turkish Straits Vessel Traffic Services (VTS)
- Aids to Navigation (Lighthouses, Buoys, dGPS, RDF, ...)
- Search and Rescue
- Marine Communication
- Marine oil spill response during salvage operations or in case of emergency.

Kiyi Emniyeti Genel Mudurlugu (The Directorate General of Coastal Safety) which may be also referred to as the Salvors hereinafter for the purpose of this guide, has a large fleet of tugs. They are stationed in various points in Turkish Straits as follows:



Particularly in Bosphorus, the response time to emergencies is very short. In minutes, tugs of the Salvors are able to intervene to vessels in danger. The Salvors make investments to the tugs and other sea crafts for effective services and therefore when we argue that they claim unfairly high rewards, they always defend themselves with the arguments relying on three paragraphs of the Article 13 of the Salvage Convention:

- (h) the promptness of the services rendered;
- (i) the availability and use of vessels or other equipment intended for salvage operations;
- (j) the state of readiness and efficiency of the salvor's equipment and the value thereof

Practically, the Salvors are saying that they invest on tugs for the safety of vessels and properties on board, they have many stationed tugs in and around Turkish Straits and they are able to mobilize to vessels in minutes therefore, they allege that they would be entitled for high rewards regardless of whether the actual services rendered justify claims or not.

Summary of this part is as follows:

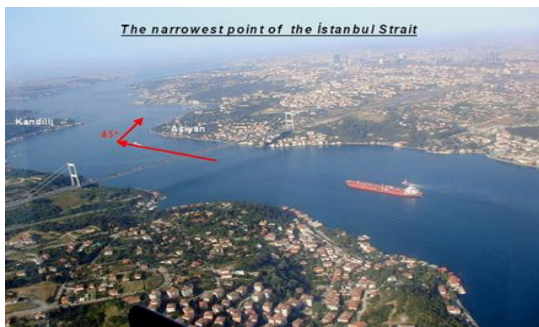
- There is a monopoly right for salvage services in Turkish Straits and Marmara Sea
- This monopoly right is granted to a state-owned organization called Kiyi Emniyeti Mudurlugu (The Directorate General of Coastal Safety)
- This Kiyi Emniyeti Genel Mudurlugu (The Directorate General of Coastal Safety) is not just salvors but also give other services including pilotage and Vessel Traffic Services in Turkish Straits

- It is a large company with financial straghts and they have staioned tugs in Turkish Straits so that in case of engine problem etc they may intervene in minutes
- The stance of Kiyi Emniyeti Genel Mudurlugu (The Directorate General of Coastal Safety) is that they are professional salvors who invest in tugs, equipment and personnel to assist ships in case of emergency and they are ready 24/7 so they claim/allege that they should be compensated even if the servies rendered do not justify the claim.
- While Kiyi Emniyeti Genel Mudurlugu (The Directorate General of Coastal Safety)makes unreasonable claim they are very useful in case of a real danger like fire on board or other risks because they are able to mobilize and intervene in minutes in Turkish Straits for assisting vessels.

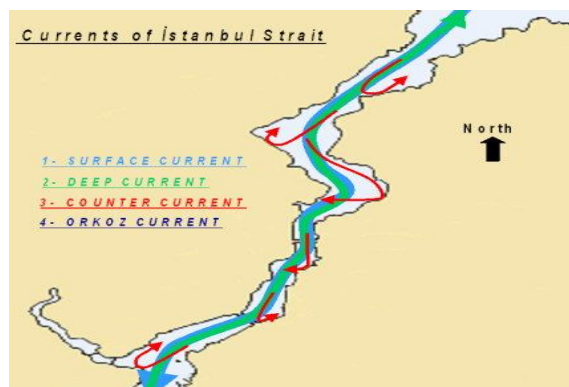
## Turkish Straits

Turkish Straits are defined to include Bosphorus, Dardanelles and Marmara Sea under Maritime Traffic Regulations for Turkish Straits.

Bosphorus is an S – Shaped narrow channel with a lenth of 18 miles where average width is about 0.8 NM. At the narrowest point, the width is 700 meters. There are many sharp turns requiring alteration of course at large angles.



Currents are mostly effective from North to South where its speed may increase up to 7-8 Knots depending on weather conditions. At the Black Sea entrance of Bosphorus, anchorage and approaching are risky under heavy weather conditions. The domestic traffic is heavy in Bosphorus, particularly ferries carrying passengers, small fishing and pleasure boats cause risks for transit vessels. In order to reduce risks in Bosphorus, cureently the traffic is one-way and the VTS manage the transit passages from South to North or from North to South depending on the number of vessels at the entrances of Bosphorus.



Dardanelles is about 38 NM long with a general width ranging from 0.7 to 1.1 Nm, connecting the Aegean Sea with the Sea of Marmara & separating the Gallipoli peninsula of European Turkey from Asian Turkey. Nara turn is challenging where course should alter about 80°. Traffic is two-way. The currents are southerly with a speed up to 4 knots but the weather **conditions may increase the currents' speed.**

Marmara Sea is the inland sea that connects the Black Sea to the Aegean Sea through Bosphorus and Dardanelles. The traffic is busy on Traffic Separation Scheme but the risks are relatively low in case of an incident and engine problem where the area of Marmara Sea is sufficient for vessels to drift and there are many areas where vessels may safely drop anchor in case of emergency.

### Salvage Law of Turkey

A new Turkish Commercial Code came into force on 1 July 2012, substantially codified the provisions of the International Convention on Salvage of 1989 which Turkey became a party to as of 29 May 2013. Accordingly, Salvage Convention 1989 is directly applicable to all salvage cases with a foreign element. Turkey reserved its right to apply Turkish Commercial Code if all parties are Turkish in a salvage claim. You readily know that Salvage Convention 1989 gives flexibility to the parties and compulsorily applicable provisions are limited to annulment and modification of the contract and duties to prevent or minimize damage to the environment. Therefore, salvage companies may offer a salvage agreement to the master/the shipowners. Kiyi Eminiyeti Genel Mudurlugu (The Directorate General of Coastal Safety) has a special form called Turkish Salvage Agreement (TURKS) 2015.

We do not recommend the masters/ the shipowners to accept Turkish Salvage Agreement (TURKS) 2015. Once it is signed/agreed by the master, the shipowners become liable for paying the cargo or other shares of the salvage claim and providing salvage security for the cargo and other salvaged values as there is a provision in Turkish Salvage Agreement (TURKS) 2015 as follows:

*"The Owner of the salvaged vessel is jointly and severally liable to the SALVOR together with the **cargo interests for the latter's share of the salvage remuneration, arbitrators' fees, solicitors' fees, costs and other financial burdens.** Further, the shipowner is responsible for the full amount of claim including all associated expenses. The owner of the salvaged vessel shall pay the whole claim to the SALVOR relating to the salvage service rendered.*

*The shipowner agrees to pay the salvage remuneration and the associated expenses relating to the vessel, bunkers, cargo and the freight in full and also agrees that the relevant claim can be directed to himself alone. The fact that securities are provided separately shall not in any way affect to direct to the parties. "*

In addition there is a controversial arbitration clause where the arbitrators take 12% of the arbitration award so that it does encourage arbitrators for higher awards. In many ways, it is not a salvage contract which is preferable to the Owners.

## Engine Breakdown and Speed Issues

Engine breakdowns and loss of main engine power are the highest number of the incidents leading to salvage claims in Bosphorus and Dardanelles. When there is an engine breakdown in Marmara Sea, the vessel may drift or drop anchor if she is not in a close proximity to the shore with a risk of grounding however in Bosphorus and Dardanelles, vessels are subject to heavy pressure from the VTS and the pilots for accepting tug assistance.

Tugs of Kiyi Emniyeti Genel Mudurlugu (the Directorate General of Coastal Safety) are notified by the VTS or the pilot on board in case of loss of main engine power or engine breakdown and they mobilize immediately to vessel. If there is a real danger due to an engine breakdown, tugs of Kiyi Emniyeti Genel Mudurlugu (the Directorate General of Coastal Safety) are able to assist within very short period of time and vessel may be salvaged without incurring any damage. However, sometimes engine breakdowns do not cause any imminent danger therefore it is important to whether a salvage assistance is needed. In many cases, masters are forced to accept salvage assistance while there is an option to drop anchor. Because the masters are pressed by the VTS and the pilot to take tow lines from the tugs. If there is no imminent danger and even if there is a danger but at the same time if there is a possibility for safely dropping anchor, masters are not obliged to accept any tug assistance that would turn to a salvage claim and they may choose to drop anchor instead of taking line from the tug(s) of Kiyi Emniyeti Genel Mudurlugu (the Directorate General of Coastal Safety). If the vessel safely drops anchor and can keep her position without dragging anchor, the imminent danger shall not continue to exist and salvage claim would be avoided. Sometimes the VTS and the pilot on board make pressure to the master that dropping anchor in Bosphorus and Dardanelles is prohibited therefore the master would face with problems so that masters feel obliged to take tow line from the tugs by fearing that they would have problems with the authorities. It is correct that under normal circumstance vessels should not drop anchor in Bosphorus and Dardanelles but the foregoing does not apply in case of emergency. If the master thinks it is safe to drop anchor, he should do so that will prevent substantial salvage claim. The extreme result may be that the Harbour Master may impose an administrative fine to the vessel however comparing with a salvage claim such administrative fine will be very low. After safely dropping anchor no salvage claim can be made against the vessel.

## Speed Problems

There is no absolute speed limits in Turkish Straits but there is a reference to 10 knots, if possible, as a maximum speed. Sometimes, particularly big container vessels cannot reduce their speed so that such vessels are allowed to proceed with a speed more than 10 knots. As for the minimum speed, Maritime Traffic Regulations in Turkish Straits and its application instructions provides that a vessel whose speed is less than 4 knots is subject to special passage regime. In practice, the VTS does not allow to enter vessels into Bosphorus or Dardanelles directly if their speed is less than 4 knots. There have been recent cases where low speed led to salvage claims. As we stated in previous paragraphs, depending on the **weather conditions, currents are sometimes stronger and if a vessel's manoeuvring speed is** around 6-7 knots there is a risk that the speed may decrease less than 4 knots during the passage of Turkish Straits. The most important thing to remember is that slow speed does not **justify a salvage claim, in other words, even if a vessel's speed is less than 4 knots, unless** there is an imminent danger, salvage claim cannot be made due to slow speed. If there is a pilot on board, the pilot calls the tugs without informing the master and when they arrive pilot

and the VTS operator ask the master to take line from the tugs. If there is an imminent danger and there is no option to drop anchor due to the surrounding circumstances the master may accept the salvage assistance but if the vessel can steer with low speed and if there is no danger the master does not need to take line from the tugs and it should be challenged. If possible, as it is in the engine failure matters, dropping anchor may be a solution to avoid a salvage claim. If the vessel drops anchor within the traffic separation scheme, she will be required to depart immediately but again the consequence would be an administrative fine. It should be noted that after dropping the anchor the vessel should take necessary measure immediately if she is in the traffic separation scheme otherwise the Harbour Master may order salvage. On the other hand, if the vessel can drop just out of Traffic Separation Scheme then she is given 24 hours as a waiting time.

## Guidance for Masters/ the Owners

### Engine Breakdown / Speed Problems

- A good preparation of the engine is necessary before entering Turkish Straits
- If the manoeuvring speed is close to 4 knots, extra caution is necessary and even special passage which is imposed for vessels whose speed is less than 4 knots, should be considered to avoid salvage claims
- **In Turkish Straits, the pilot and the VTS operator are not the master's friend. In contrary, they are officers of Kiyi Emniyeti Genel Mudurlugu (the Directorate General of Coastal Safety) therefore the recommendations of the pilot and the VTS to accept assistance from the tugs should be approached cautiously. The master should assess whether the vessel is in danger or not. If there is no danger no assistance from the tugs should be accepted**
- The master will be pressed by the pilot and the VTS not to drop anchor and the master will be said that it is prohibited to drop anchor. However, if the surrounding circumstances do not cause any danger for dropping anchor, the master may consider it. The consequences will be an administrative fine.
- If there is a danger the master may always ask for salvage assistance and the tugs of Kiyi Emniyeti Genel Mudurlugu (the Directorate General of Coastal Safety) will be available to assist in minutes.
- If there is a pilot on board, the master should keep the VDR records in mind and if the master thinks there is no danger it should be stated to the pilot or the VTS.
- Turks 2015 Salvage Agreement should not be signed by the master.