

TURKISH SALVAGE UPDATE

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Dublin

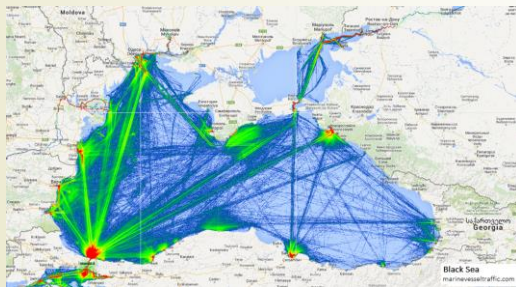
CAVUS & COSKUNSU LAW FIRM



Introduction

- ▶ Basic Facts of Turkey
- ▶ Turkish Salvage Industry
- ▶ The Directorate General of Coastal Safety
- ▶ Turkish Law of Salvage
- ▶ Salvage Claims in Turkish Straits (Monopoly Areas)
- ▶ A Salvage Case in Bosphorus

Basic Facts - Turkey



Turkish Salvage Industry

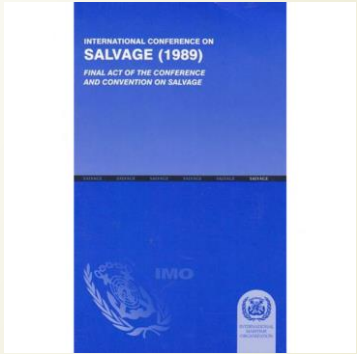


The Directorate General of Coastal Safety

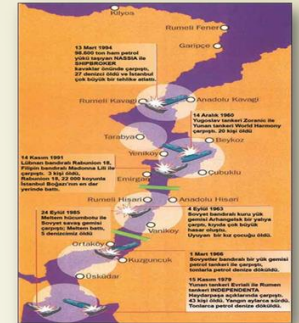
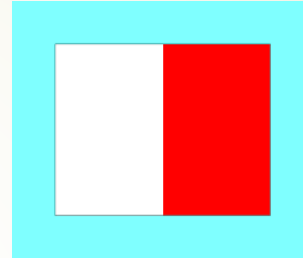


Turkish Law of Salvage

1911 ...
KARARININ KONUSU: ...
KARARININ GEREKÇESİ: ...
KARARININ SONUÇLARI: ...



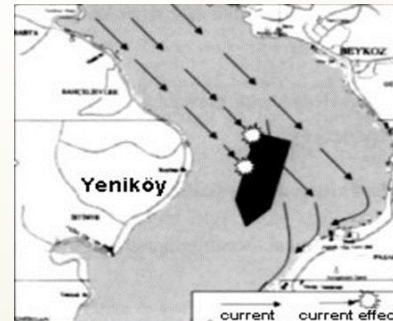
Salvage Claims in Turkish Straits



DIRECTORATE GENERAL OF COASTAL SAFETY



TURKISH SALVAGE AGREEMENT
(TURKS) 2015



A Salvage Case in Bosphorus



(حکیم باشی مرحوم صالح افندی)

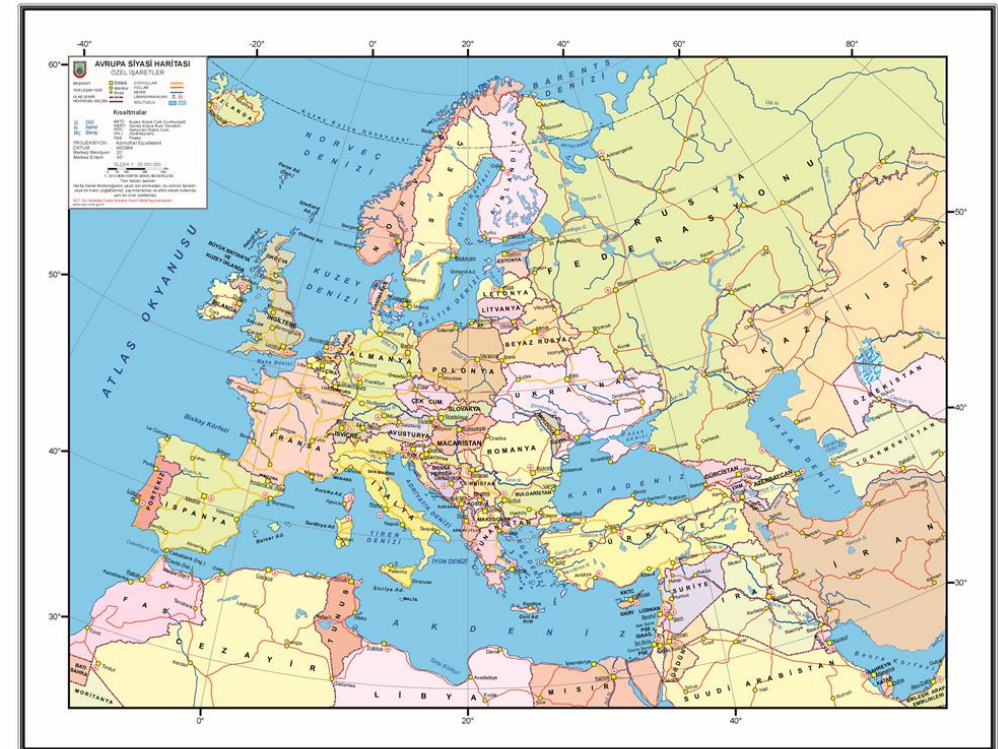
TURKEY

Basic Facts



Basic Facts

- Key location connecting the Black and Aegean Seas through the Bosphorus, the Sea of Marmara and the Dardanelles



Basic Facts

NOAH'S ARK



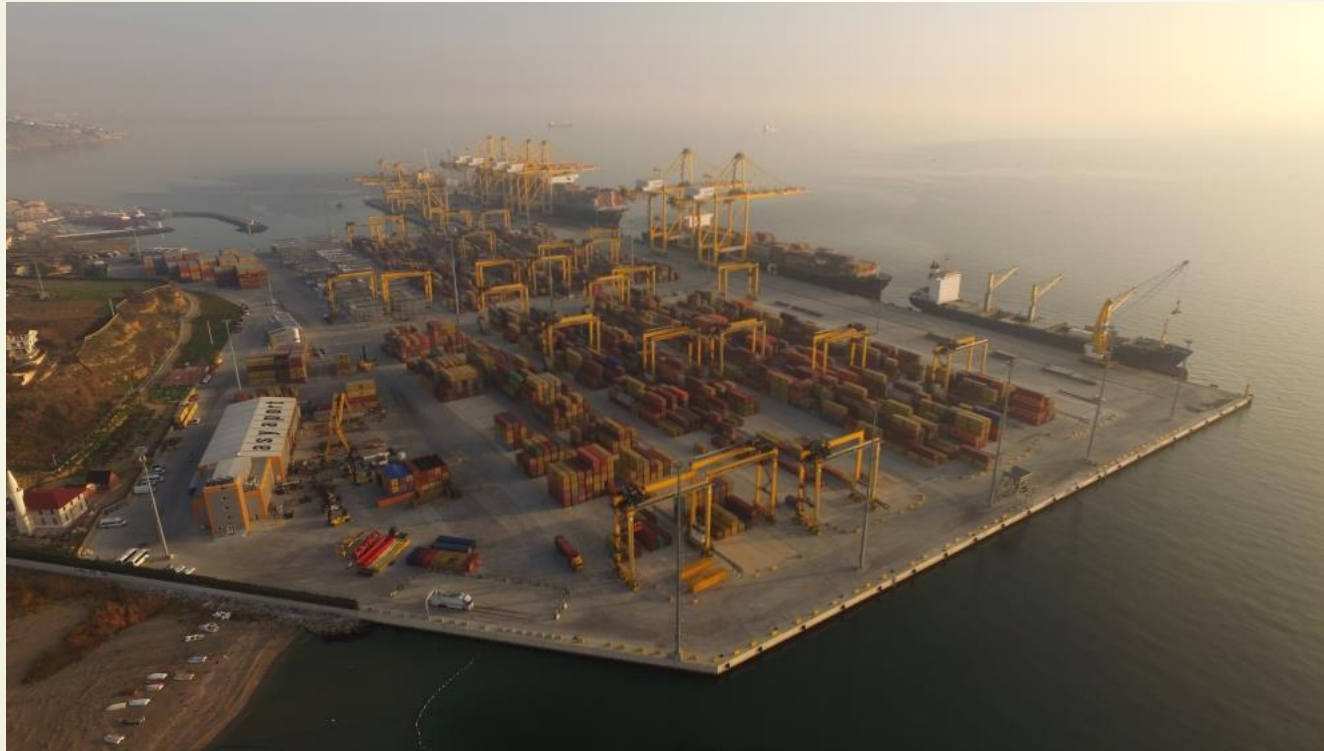


Basic Facts

- ▶ Coastline abt. 7,200 Km./ 3,888 Nm.
- ▶ Busy Sea Traffic for Transit Passages
- ▶ Major Ports

Basic Facts

Ports

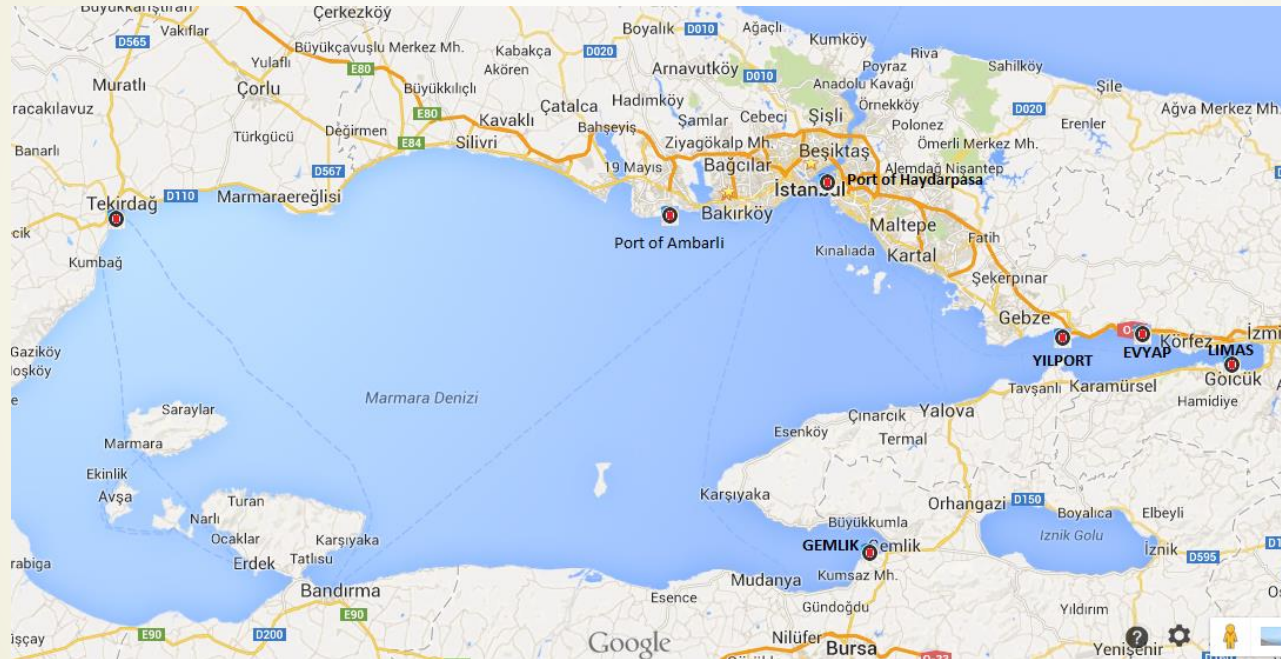


Container Handling Figures 2018
10,843,998 TEU

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Basic Facts

Ports



Container Handling Figures 2018
10,843,998 TEU

Basic Facts

Ports



Cargo Figures 2018 – 460,153,560 Tonnes

Basic Facts

Ports



Liquid Cargo Figures 2018 – 139.717.069 Tonnes

Basic Facts

Shipyards



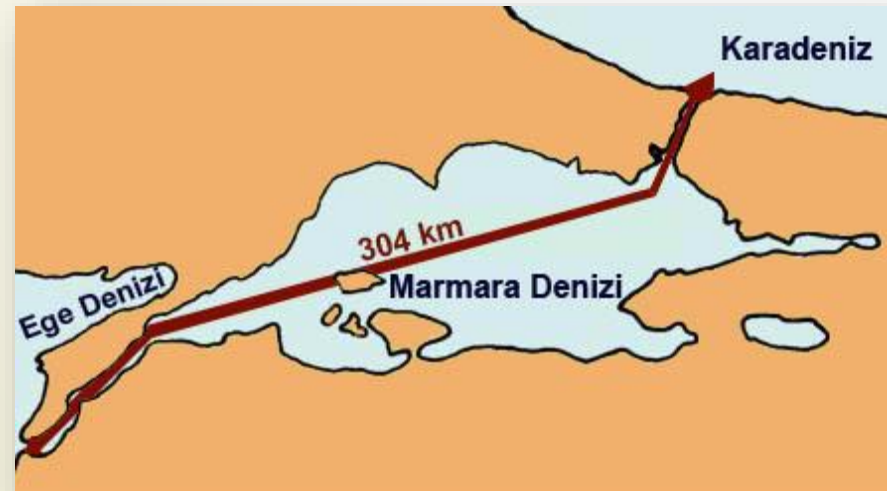
Turkish Shipbuilders' Association (GISBIR) has 94 members
Ship Repair
Ship Building

Basic Facts

Aliaaga Ship Breaking – Scrap Facilities



Basic Facts



Transit Passage Statistics

Dardanelles (Canakkale)

2018

Number of Vessels : 43,999

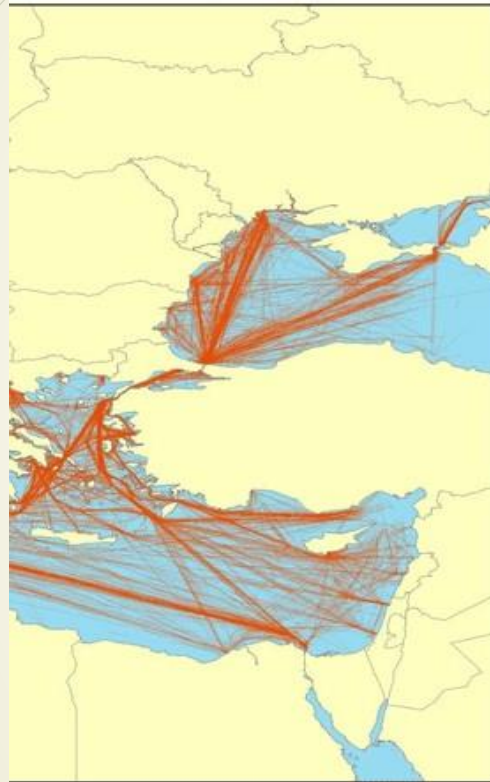
Bosphorus (Istanbul)

2018

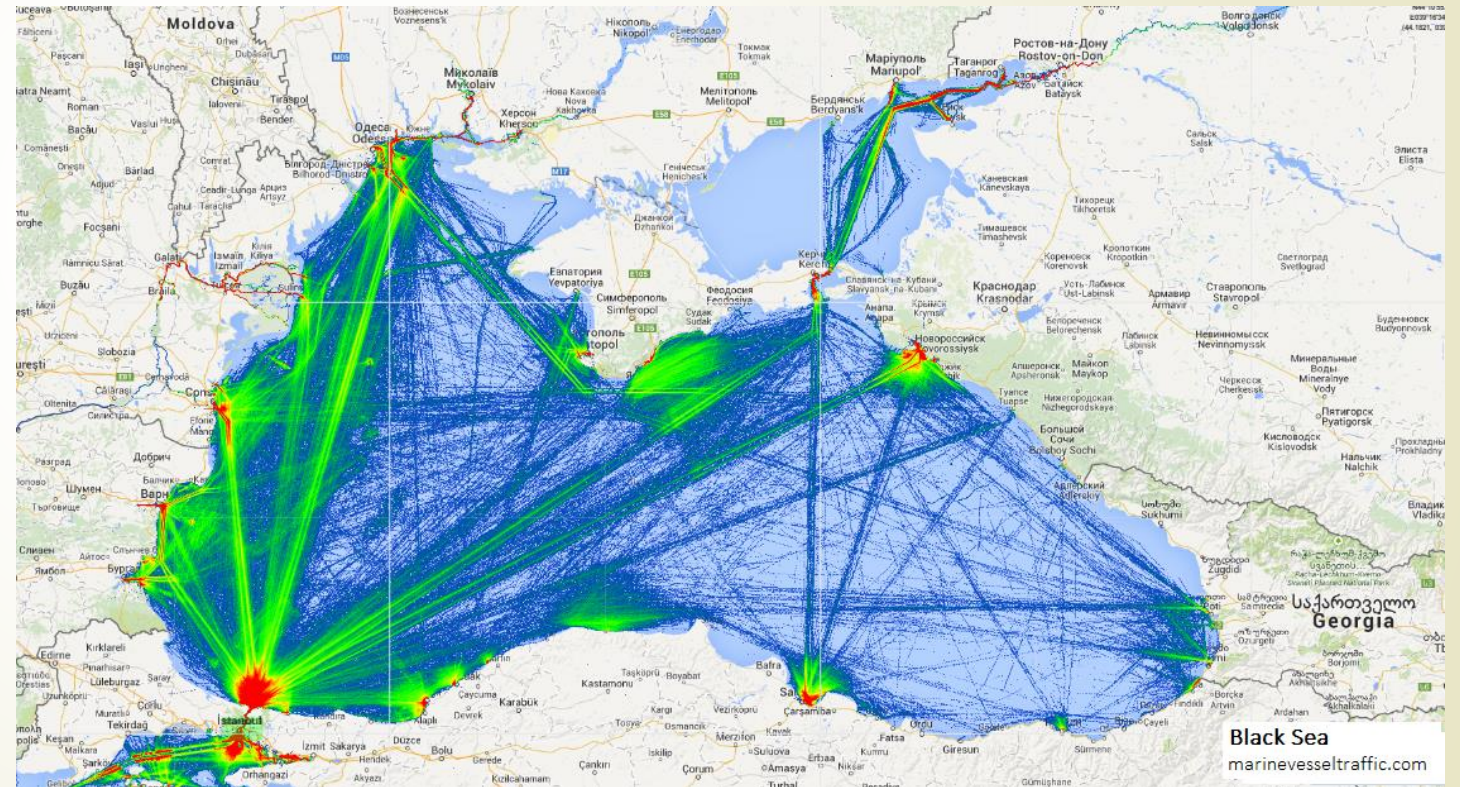
Number of Vessels : 41,103

About 164 NM

Basic Facts



Busy Traffic: Transit – Domestic – In/Out





Turkish Salvage Industry

- ▶ State-owned Salvage Company
- ▶ Private Salvage Companies

Turkish Salvage Industry

History of Professional Salvage

Mid -20's Kilcher and Walkers

Tugs: "La Nina", "La Valetta", "Cleopatra" , "Cesar", "Kicknar" (British Flag), "Sanbel Parados" (Danish Flag) and "Belos" (Greek Flag)



Turkish Salvage Industry

History of Professional Salvage

Era of Nationalization and Cabotage Law

1930 – Turk Kurtarma Ltd (Turkish Salvage Ltd.)



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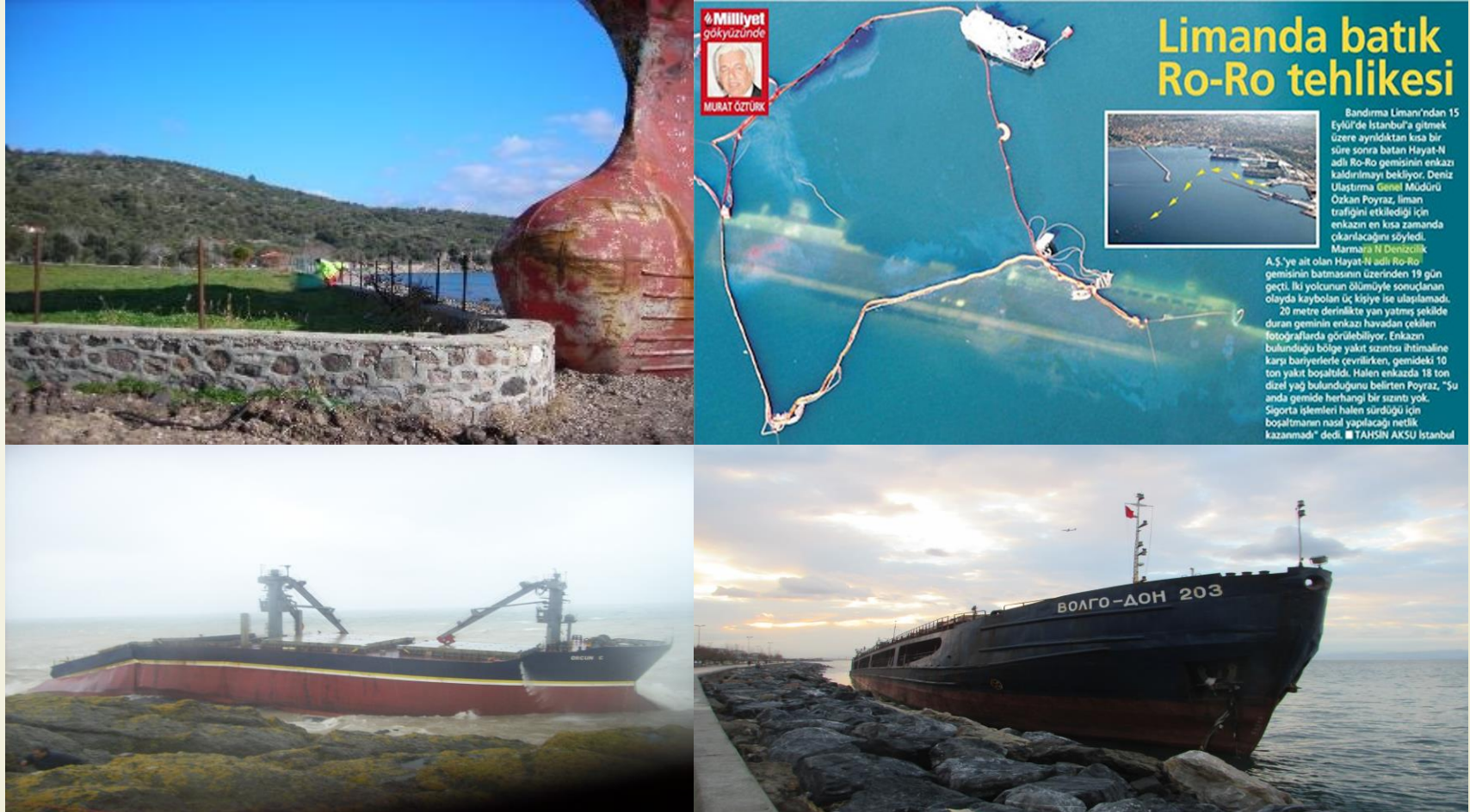


Turkish Salvage Industry

History of Professional Salvage

1926	Cabotage Law (Prevented foreign companies from operating in Turkish waters)
1930	Turk Kurtarma Ltd.
1940's	Turkish Maritime Lines as State-owned Salvors
1961	Metear
1981	Istanbul Salvage
1982	Detek
1983	Medmarine
1984	Turkish Maritime Lines – Salvage & Towage Department
1984	Uzmar
1994	Coastal Safety and Salvage Administration
1994	Omur Salvage
1995	Aras Salvage
1997	Directorate General of Coastal Safety and Salvage Administration
2006	Solar/Mare
2007	Directorate General of Coastal Safety

Turkish Salvage Industry





Turkish Salvage Industry

Private Salvage Companies

- ▶ Low Number of Salvage Cases
- ▶ Effect of Monopoly Rights in Turkish Straits



Turkish Salvage Industry

Private Salvage Companies

Diversification

MARINE CONSTRUCTION

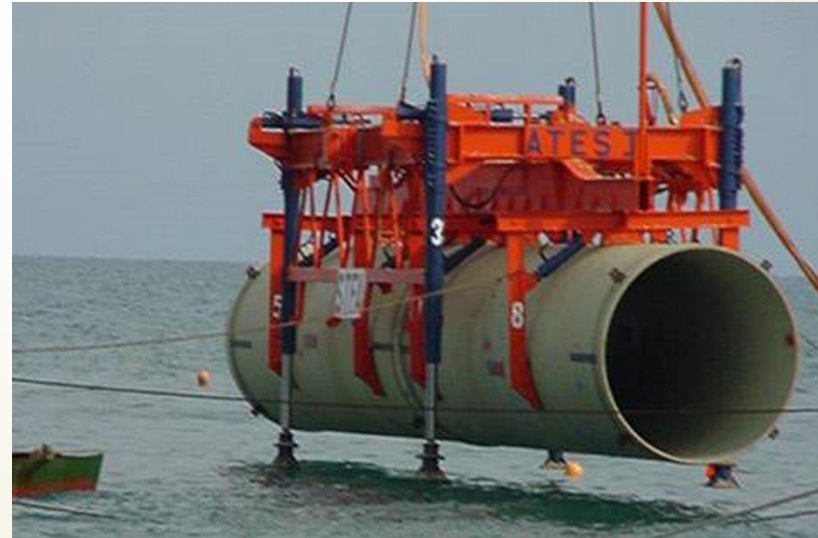
OFFSHORE OPERATIONS/SUPPLY

TUG OPERATION (Towage & Brokerage)

OIL & GAS PROJECTS

Turkish Salvage Industry

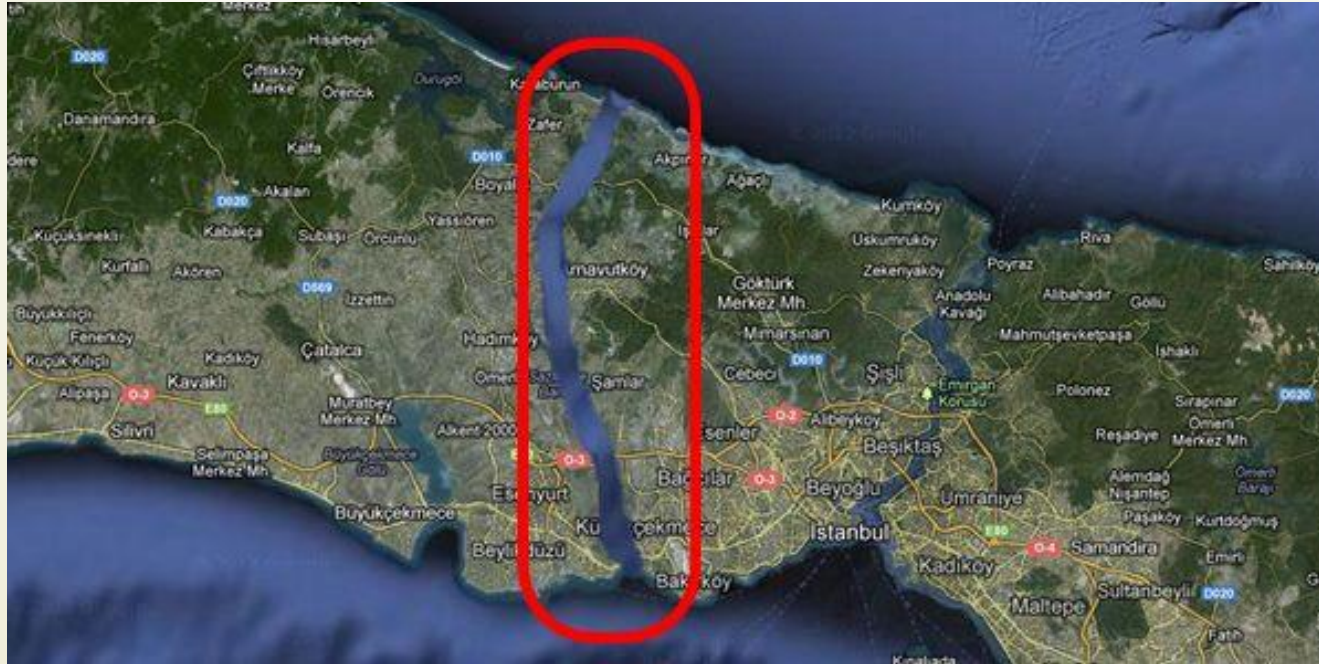
Private Salvage Companies



Turkish Salvage Industry

Private Salvage Companies

Major Projects – Channel Istanbul?



The Directorate General of Coastal Safety



A state-owned organization under the Ministry of Transportation and Infrastructure

The Directorate General of Coastal Safety

1856

The Directorate General of Lighthouse Administration



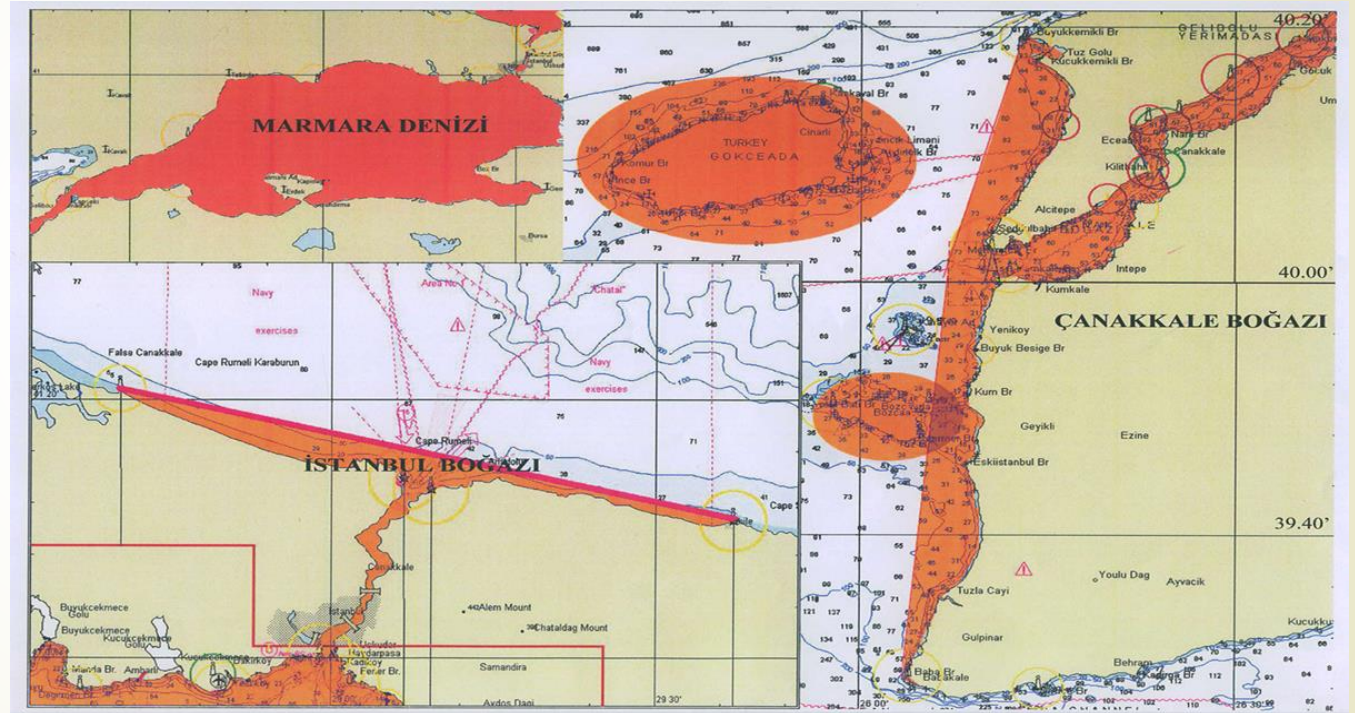


The Directorate General of Coastal Safety

- ▶ Search and Rescue
- ▶ Salvage and Towage
- ▶ Vessel Traffic Services (TSVTS)
- ▶ Pilotage
- ▶ Aids to Navigation (Lighthouses, Buoys, DGPS, RDF, ...)
- ▶ Marine Communication
- ▶ Emergency Marine Oil Spill Response

The Directorate General of Coastal Safety

MONOPOLY RIGHTS
FOR SALVAGE SERVICES



The Directorate General of Coastal Safety

Nassia c/w Shipbroker – 13.03.1994



The Directorate General of Coastal Safety

Nassia c/w Shipbroker – 13.03.1994



The Directorate General of Coastal Safety

Nassia c/w Shipbroker – 13.03.1994



Capt. Saim Oguzulgen,
Pilot

The Directorate General of Coastal Safety



The Directorate General of Coastal Safety



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Turkish Law of Salvage

Legal System in Turkey

Maritime Law

Salvage Law



Turkish Law of Salvage

Turkish Law is a civil law system based on codified laws.

The Republic of Turkey has a constitution which has supreme authority.

The Constitution.

Codes and Statutes - International Treaties

Presidential Decrees.

Regulations

By-laws

Circulars – Directives etc.



Turkish Law of Salvage

International Treaties

The same as codes and statutes.

Compliance of international treaties with the Constitution cannot be challenged before the Constitutional Court.

Ratification by the Parliament through an enactment of law,



Turkish Law of Salvage

Courts

Courts of First Instance (Specialized Maritime Courts)

Regional Appellate Courts

Supreme Court of Appeals



Turkish Law of Salvage

Court Decisions

Limited Effect

Not Binding – except the decisions of the Supreme Court of Appeal's General Assembly on the Unification of Judgments



Turkish Law of Salvage

Maritime Law under Turkish Commercial Code

Articles 1298 – 1319 of Turkish Commercial Code are «Salvage Law» provisions

Salvage Convention 1989 is codified into Turkish law through Turkish Commercial Code



Turkish Law of Salvage

1989 Salvage Convention

Turkish Commercial Code

Article 1 – Definitions	Art. 1298
Article 2 - Application of the Convention	
Article 3 - Platforms and drilling units	Art. 1298
Article 4 - State-owned vessels	
Article 5 - Salvage operations controlled by public authorities	
Article 6 - Salvage contracts	Art. 1300
Article 7 - Annulment and modification of contracts	Art. 1301
Article 8 - Duties of the salvor and of the owner and master	Art. 1303
Article 9 - Rights of coastal States	
Article 10 - Duty to render assistance	Art. 1317
Article 11 - Co-operation	



Turkish Law of Salvage

1989 Salvage Convention

Turkish Commercial Code

Article 12 - Conditions for reward	Art. 1304
Article 13 - Criteria for fixing the reward	Art. 1305
Article 14 - Special compensation	Art. 1312
Article 15 - Apportionment between salvors	
Article 16 - Salvage of persons	Art. 1318
Article 17 - Services rendered under existing contracts	Art. 1298
Article 18 - The effect of salvor's misconduct	Art. 1311
Article 19 - Prohibition of salvage operations	Art.1298
Article 20 - Maritime lien	Art.1315
Article 21 - Duty to provide security	Art. 1314
Article 22 - Interim payment	Art. 1316
Article 23 - Limitation of actions	Art. 1319



Turkish Law of Salvage

1989 Salvage Convention

Article 24 - Interest

Article 25 - State-owned cargoes

Article 26 - Humanitarian cargoes

Article 27 - Publication of arbitral awards

Turkish Commercial Code

Art.1313



Turkish Law of Salvage

Turkey is a party to the International Convention on Salvage of 1989 with full effect as of 29 May 2013

Salvage Convention, 1989 is directly applicable to all salvage cases with foreign element.



Turkish Law of Salvage

Salvage provisions of Turkish Commercial Code are not mandatorily applicable except

- rules governing the annulment of the contract
- the duty of the prevention and mitigation of the environmental damages



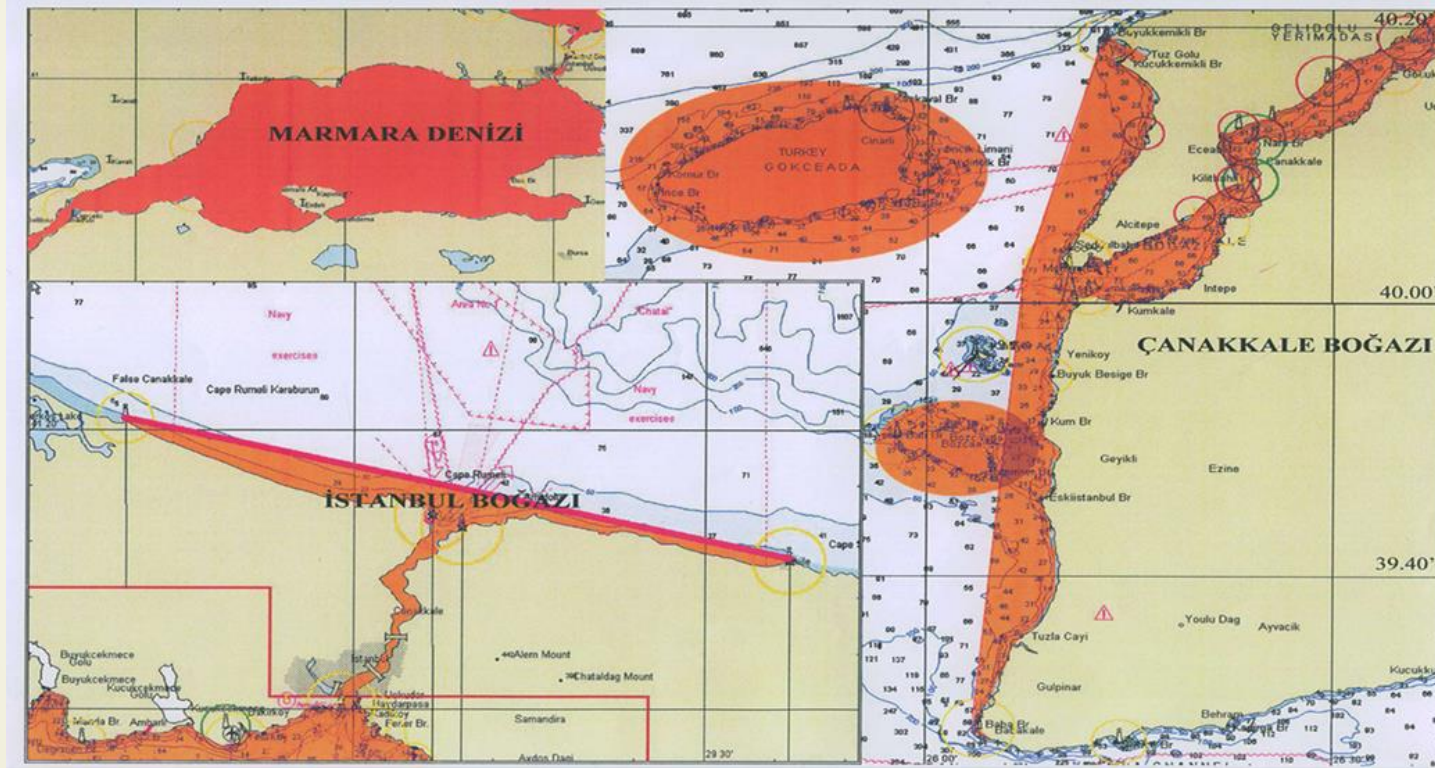
Turkish Law of Salvage

Salvage Contracts

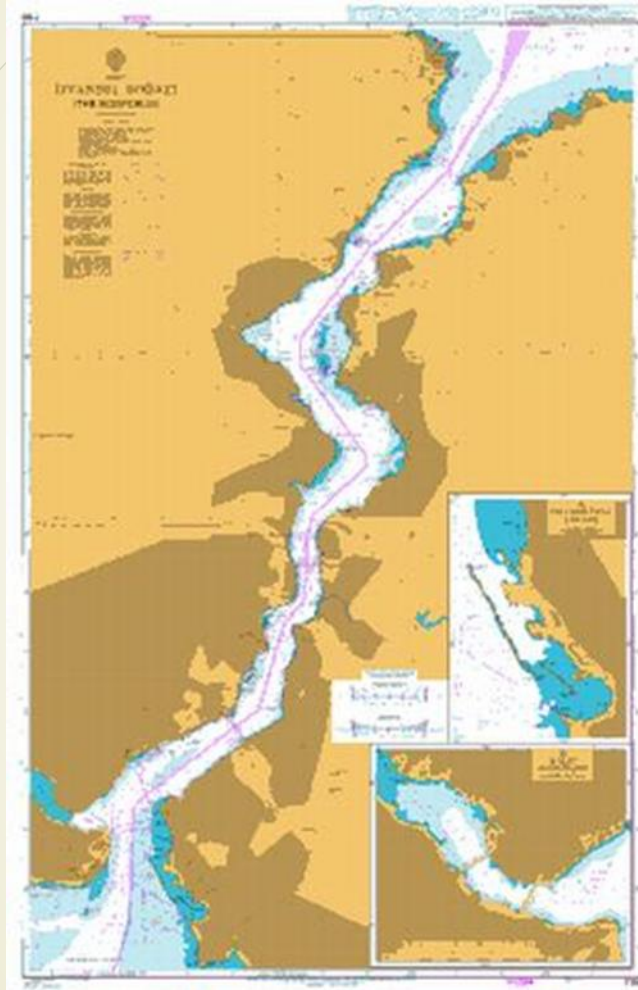
Master's authority on behalf of the Shipowner and the owner(s) of the properties on board

The authority is extended to agree on the jurisdiction or arbitration clause - Article 1300 **IMPORTANT UNDER TURKISH LAW**

Salvage Claims in Turkish Straits



Salvage Claims in Turkish Straits



BOSPORUS – ISTANBUL BOGAZI

S – Shaped, narrow channel

18 miles (31 km) with an average width of 1.5 km, 700 m. at narrowest.

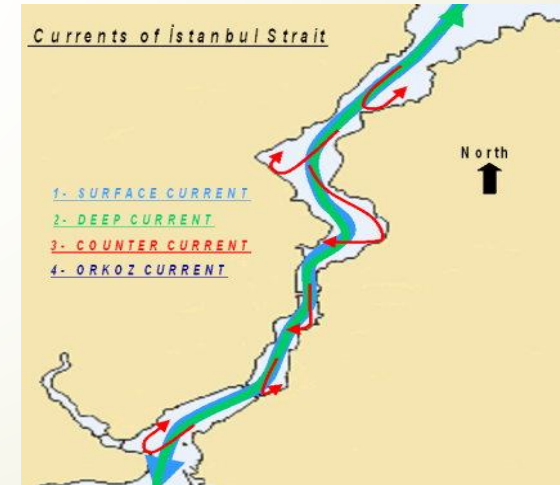
Sharp turns, (70° Umuryeri, 80° Yenikoy, 45° Kandilli) require 12 course alterations,

Currents - up to 7-8 Knots depending on weather conditions

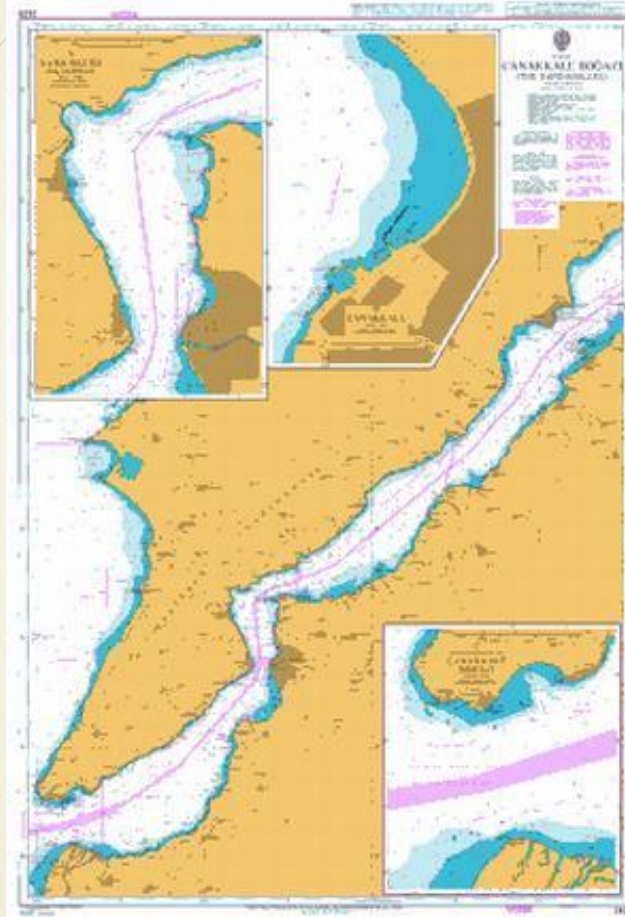
Salvage Claims in Turkish Straits



Bosporus



Salvage Claims in Turkish Straits



DARDANELLES – ÇANAKKALE BOGAZI

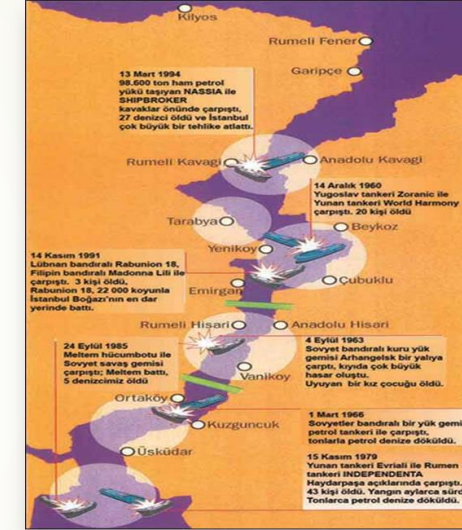
Abt. 38 Nm (70 km) long with a general width ranging from 0.7 to 1.1 Nm, connecting the Aegean Sea with the Sea of Marmara & seperating the Gallipoli peninsula of European Turkey from Asian Turkey

Sharp turns, 80° in 'Nara' turn

Salvage Claims in Turkish Straits

Frequent Causes of Salvage Claims

- Engine Breakdown
- Collision
- Grounding
- Allision



Usually VTS or Pilot on Board notifies the Salvage Department of the Directorate General of Coastal Safety



Salvage Claims in Turkish Straits

Salvage or not Salvage?

Salvage Agreement

VTS Communication with the Master

Acceptance of Salvage Assistance without Contract

Rejecting Salvage Claim

Salvage Claims in Turkish Straits

Standard Salvage Agreement of the Directorate General of Coastal Safety

TURKISH OPEN FORM?

Turkish Open Form practically died when a court case concerning motor tanker SC Sara is finalized.

“SC SARA” – Grounding 25.11.2007

“SC SARA CASE” , Court of Appeal, 11th Division Case No: 2009/3257 dated 15th February, 2011;

“Ex-parte arbitration clause, breach of defence rights and general principles of law, the arbitration clause of the TOF is found invalid”



Salvage Claims in Turkish Straits

NEW SALVAGE AGREEMENT

DIRECTORATE GENERAL OF COASTAL SAFETY



**TURKISH SALVAGE AGREEMENT
(TURKS) 2015**

Salvage Claims in Turkish Straits

No Cure No Pay

Except Article 6 (Special Compensation)

Article 2

...undertook to endeavor utmost effort to save the property within the context of provisions of this agreement

The Salvor is entitled to exercise its absolute discretion to withdraw from this salvage agreement and to terminate the salvage operation notwithstanding that the operation may have already started...

no claim can be made (in case of termination by the Salvors

Article 3

The Master's assistance, use of the vessel's equipment etc.

DIRECTORATE GENERAL OF COASTAL SAFETY



TURKISH SALVAGE AGREEMENT
(TURKS) 2015

Salvage Claims in Turkish Straits

Article 4

No intervention by the Master or the crewmembers

Duty to disclose information by the master

Article 5

The delivery of the vessel, completion of the salvage operation

The MASTER, is immediately obliged to provide a jointly and severally liable, without any time limitation a cash security or an acceptable Bank Guarantee in the amount determined by the Salvor against the salvage remuneration, costs, interest, arbitrators' and solicitors' fees, arbitration costs as well as all other items The MASTER may be liable to pay the SALVOR.No claim for compensation may be made against the SALVOR for having obtained a high amount of security....separate securities may be given with the written consent of the SALVOR.the SALVOR may still exercise the legal process against the shipowner for the whole salvaged properties.

DIRECTORATE GENERAL OF COASTAL SAFETY



TURKISH SALVAGE AGREEMENT
(TURKS) 2015

Salvage Claims in Turkish Straits

Article 6

Special Compensation

Article 7

The Owner of the salved 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 salved 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.

DIRECTORATE GENERAL OF COASTAL SAFETY



TURKISH SALVAGE AGREEMENT
(TURKS) 2015

Salvage Claims in Turkish Straits

Article 7 (cont.)

Dispute Resolution

Arbitration

Article 8

If the vessel in danger is refloated by her own means.... the SALVOR shall be entitled to recover an appropriate remuneration against the expenses and any damages it has incurred.

If the vessel ...salved by third parties or by another vessel belonging to the same persons,the full salvage remuneration in terms of indemnity.

Article 9

Payment – Enforcement of the Award

DIRECTORATE GENERAL OF COASTAL SAFETY



TURKISH SALVAGE AGREEMENT
(TURKS) 2015

Salvage Claims in Turkish Straits

We do not recommend the Master to sign

Because

The liability and security provisions

Arbitration Clause

DIRECTORATE GENERAL OF COASTAL SAFETY



TURKISH SALVAGE AGREEMENT
(TURKS) 2015

Salvage Claims in Turkish Straits

May the Master/ the Owners terminate it?

Salvage Convention, 89

Article 7

A contract or any terms thereof may be annulled or modified if:

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable;
- or
- (b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

DIRECTORATE GENERAL OF COASTAL SAFETY



TURKISH SALVAGE AGREEMENT
(TURKS) 2015

Salvage Claims in Turkish Straits

May the Master/ the Owners terminate it?

Turkish Code of Obligations

Mistake

Misrepresentation

Duress

DIRECTORATE GENERAL OF COASTAL SAFETY



TURKISH SALVAGE AGREEMENT
(TURKS) 2015

Salvage Claims in Turkish Straits

Settlement

Percentage Approach

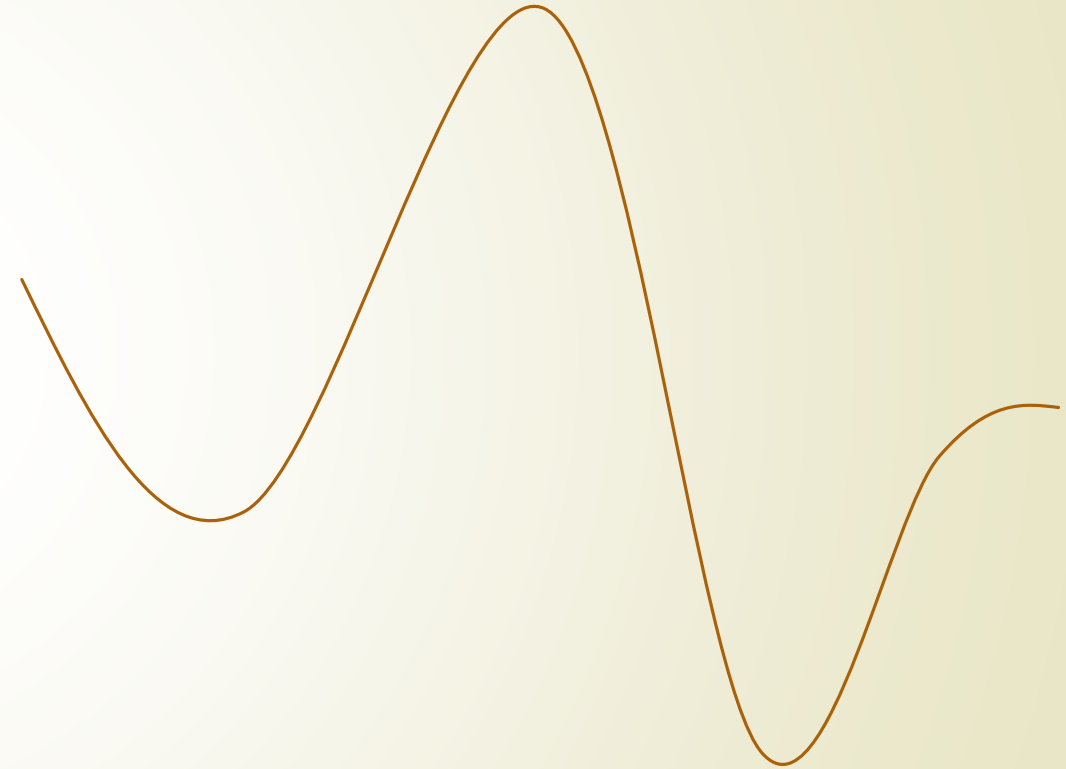
Merits of Salvage Operations?

8-12%

5-6%

Excessive Security?

Maintenance of Security?





Salvage Claims in Turkish Straits

If Turks 2015 is signed

In the absence of a salvage agreement

and no settlement?

Turkish Commercial Code

Salvage Convention, 89

The 17th Commercial Court of Istanbul (Maritime Court)

The 1st Basic Civil Court of Canakkale

Salvage Claims in Turkish Straits



WHAT THE SALVORS SAY?

CAVUS & COSKUNSU LAW FIRM



Salvage Claims in Turkish Straits



A Salvage Case in Bosphorus



"Hekimbasi Salih Efendi "
Historic Mansion

A Salvage Case in Bosphorus

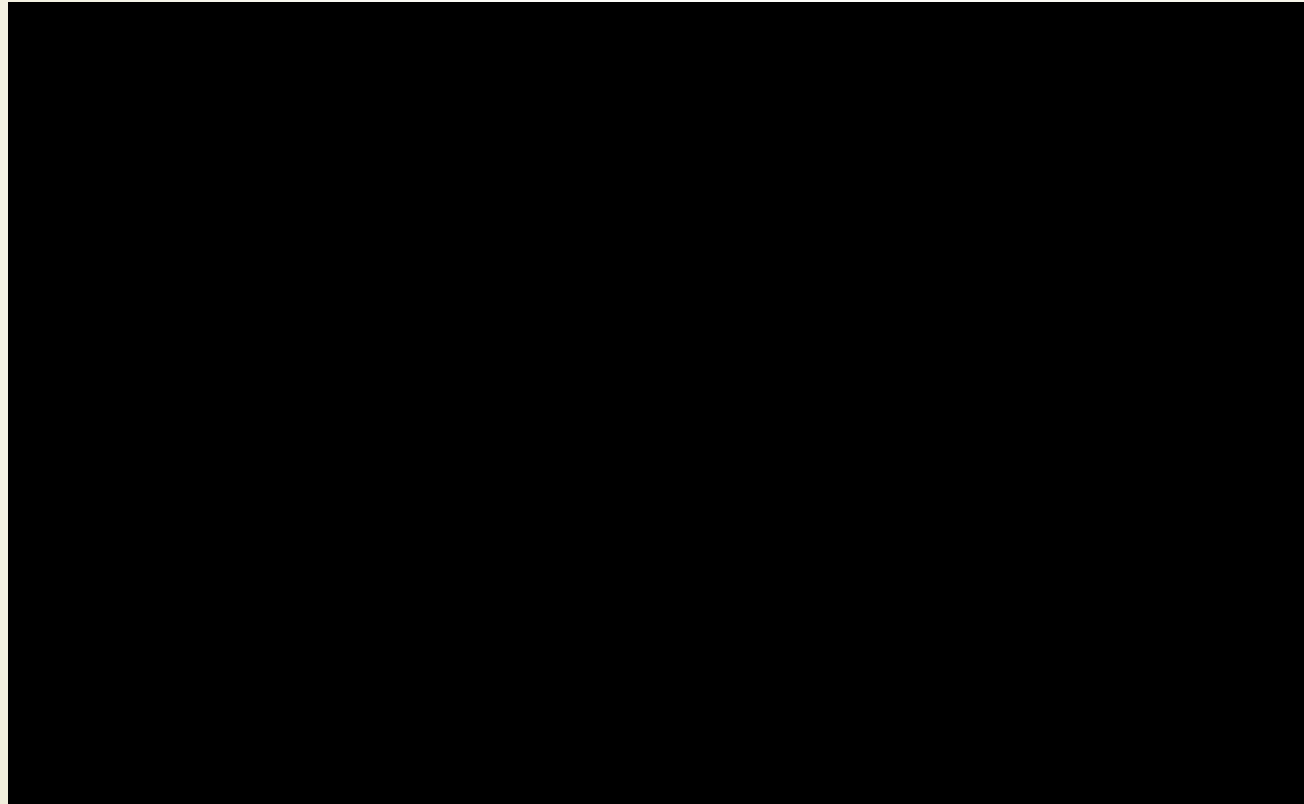


Hekimbasi Salih Efendi
(1816 – 1895)

حکیم باشی مرحوم صالح افندی

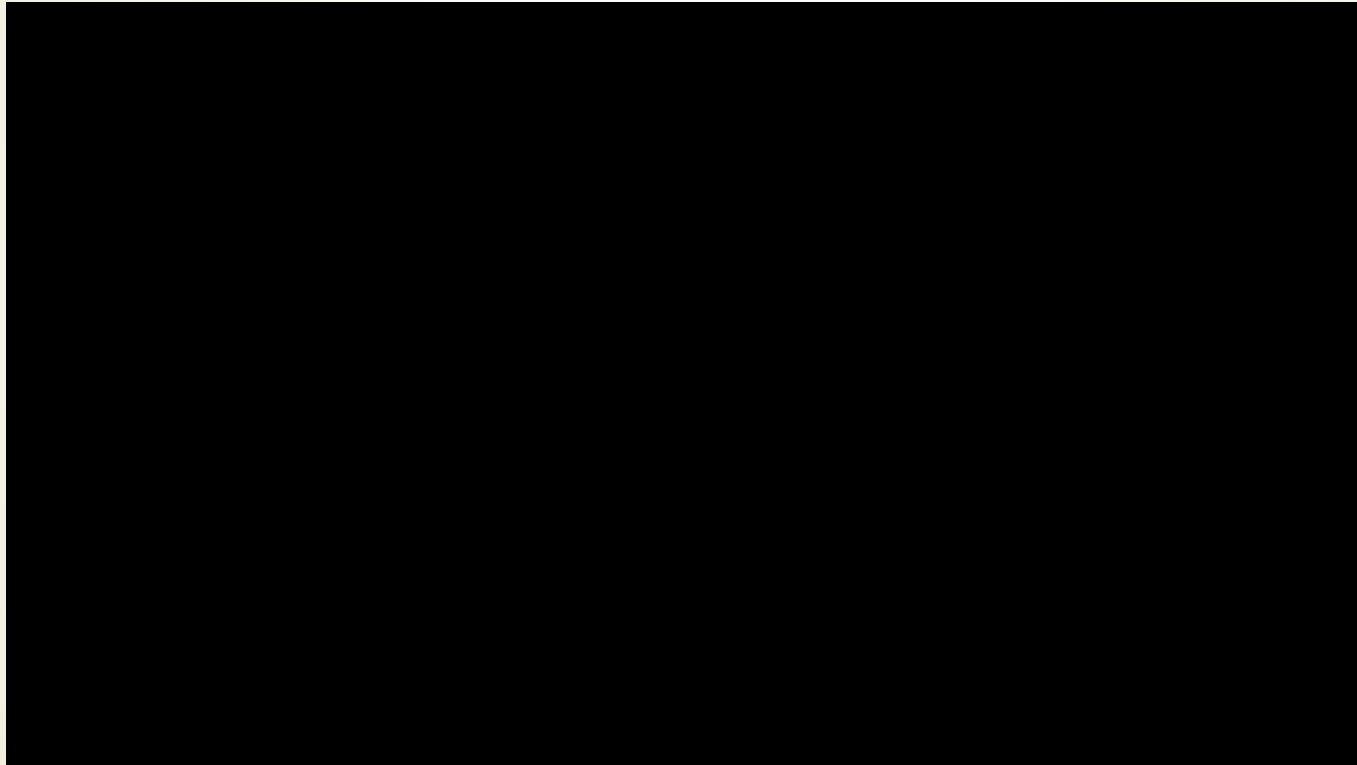



A Salvage Case in Bosphorus





A Salvage Case in Bosphorus





A Salvage Case in Bosphorus Vitaspirit – Incident

Voyage : Kavkaz, Russia – Jeddah, Saudi Arabia

Cargo : 62,622.811 Metric Tonnes Barley


Bosphorus Pilot on Board – at around 14:50 LT on 07.04.2018

Engine Problem Reported – at around 15:20 LT on 07.04.2018

The Incident – at around 15:40 LT on 07.04.2018

Dropping Anchor and Cable Problem - at around 15:53 – 17:50 LT on 07.04.2018

Vessel safely dropped anchor at Anchorage «A» – at around 19:22 LT on 07.04.2018




A Salvage Case in Bosphorus Vitaspirit – Incident

- ▶ Whether it was salvage?
- ▶ Danger
- ▶ The Salvors – Pilotage / VTS / Salvage Services

Conflict of Interest?


- ▶ Criteria for fixing the reward?
- ▶ Outcome?



A Salvage Case in Bosphorus Vitaspirit – Incident

The Salvors made a salvage claim of USD 10,600,000 against the vessel, the cargo, bunker and freight

The Vessel was arrested for USD 5,311,680 – 56%



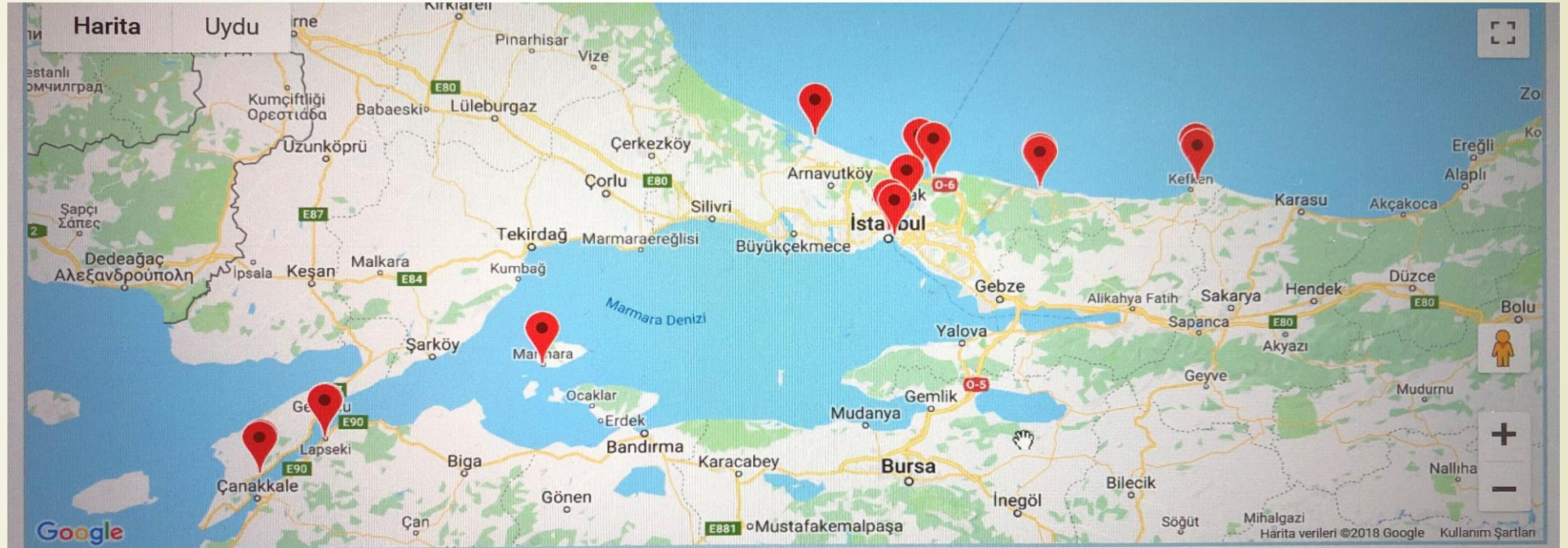
A Salvage Case in Bosphorus Vitaspirit – Incident

Kiyi Emniyeti Genel Mudurlugu v the Owners of Vitaspirit

Case No. 2018/197 E.

The 17th Commercial Court of Istanbul (Maritime Court)

A Salvage Case in Bosphorus Vitaspirit – Incident



(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



Salvage Claims in Monopoly Areas Summary

Salvage Assistance

Risks are high in Turkish Straits

VTS and Pilot as parts of the Directorate General of Coastal Safety

Prompt response in case of engine breakdown or any other incident

VTS Communications over VHF is important

Ship's Master has authority for the safety of life and property

Turks 2015 – Not recommended!



Salvage Claims in Monopoly Areas Summary

Salvage Claim

Vessel will be taken to a safe anchorage

Demand for documents (Hull Insurance Policy – Cargo Documents – Bunkers....)

Security Demand → Arrest of Vessel

Settlement Meeting

If Turks 2015 signed or not

Settlement Agreement (Payment) or Legal Proceedings



Salvage Claims outside Monopoly Areas

Salvage Assistance

Competent professional salvors are available in Turkey

Lloyd's Open Form

Wreckhire

Wreckstage any internationally recognized contract

Lump sum quote approach may be possible

SCOPIC?



Salvage Claims outside Monopoly Areas

Salvage Assistance

Can Foreign Salvage Companies give salvage services in Turkey?

"All commercial shipping and related activities between the ports of Turkey and at Turkish ports are granted to Turkish citizens. Coastal lines is reserved for Turkish-flag vessels. "

" Services at Turkish ports and coasts can be given by Turkish citizens and Turkish companies only. Transportation and trade activities in Turkey's coastal waters and rivers are under the sovereignty of Turkish citizens. (Cabotage Law, No 815) "

Role of Foreign Salvage Companies

Expertise Consultancy Portable Equipment?

TURKISH SALVAGE UPDATE



Any question?

TURKISH SALVAGE UPDATE

THANKS!

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