

CITIZENS FOR FLORIDA'S WATERWAYS

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November/December 2017

Citizens For Florida's Waterways promotes the need for responsible use of Florida's waterways. Our primary objective is to encourage coexistence among recreational and commercial boaters, the marine industry, property owners and the environment. Citizens For Florida's Waterways advocates education in the safe and considerate use of watercraft with respect for our marine environment and conservation.

The Year in Review

Looking back over the passing year is a tradition for the last CFFW Newsletter of the calendar year. This has been a very interesting year. There is both good news and bad news. The Brevard ½ cent sales tax increase to clean up the Indian River Lagoon went into effect. Priority items of the plan include muck removal and septic tank conversion to sewer. It's going to take a few years to accomplish visible changes to the quality of the IRL ecosystem.

Things are off to a slow start. While some limited muck removal activities have progressed, many others, including those aimed at clearing navigational channels, linger in limbo while the multiple State and Federal agency serial reviews and approval process does its rendition of the elephant walk.

Many question the true return on investment of eliminating septic tanks in order to reduce lagoon nutrient loads. Eliminating septic tanks requires adding those requirements to an already over burdened existing sewage infrastructure that continues to fail and dump 10s of MILLIONS of gallons of raw sewage directly into the IRL. We have Hurricane Irma to carry some of the blame for this disaster, but let's face it, this is Florida. We get lots of rain and hurricanes are an annual threat.

The bottom line is that while there has been a recovery of sorts in the acreage where seagrass is found, the density of that seagrass is so severely diminished that the resulting total seagrass mass in the IRL has continued to dramatically decline each year since 2010. Seagrass is the life-blood of the IRL ecosystem. Unless this trend is reversed, IRL recovery will be decades, not years.

There is some more good news. Early this spring, the USFWS finally formalized what many of us have known for decades. The manatee is NOT Endangered. It is clear that without the relentless pursuit of science and publication and presentation of supporting data by CFFW and a few others, this determination would not have been made. Additionally, through the year, we have been in discussion with USFWS with respect to reducing the year-round over-

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Please Mark Your Calendars!



- » December 4, 2017 CFFW Board of Directors Meeting 6:30 pm Karen Rood Bldg (near the boat ramp) at Kiwanis Island, Merritt Island. Open to the public.
- » December 6, 2017 District 2 Dredging Committee Meeting 6:00 pm Karen Rood Bldg (near the boat ramp) at Kiwanis Island, Merritt Island.Open to the public.
- » December 9, 2017 Cocoa Beach Christmas Boat Parade Stay tuned to www.cffw.org for Captain's meeting and other details
- » December 14, 2107 Merritt Island Christmas Boat Parade Captain's Party/ Meeting 6-8 at Fishlips-Upper Deck in Port Canaveral. Not mandatory but advised since it is under new direction
- » December 16, 2017 Merritt Island Christmas Boat Parade Stay tuned to www.cffw.org for Captain's meeting and other details.

Stay tuned to CFFW.org for more information

Newsletter Delivery Mode

E-Newsletters Now Available

CFFW is offering all members the option to receive all future newsletters by email instead of a hard copy by mail. The Board of Directors have reviewed the expense logs for the past few years to determine where we could save money and this is the biggest expense we have.

If you wish to save your club money on printing and postage, please reply to info@cffw.org and we will add you to the email list for your newsletters! You will receive an email stating your E-Newsletter is ready for viewing. If at any time you wish to receive the hardcopy again, just send us a note at the same email and you will again receive the hardcopy.

You can view the same exact version online at CFFW.org and click on "newsletters" tab and the issue you would like to view.



The Year in Review

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concentration of the manatee population here in Brevard. Of course this requires changes to, or elimination of the warm water outflow at the Port St John power plants, which have altered the natural migration habits for manatees since 1960. USFWS recognizes the urgency of correcting this mistake, like so many of the ridiculous speed zones, an artifact of the crisis management mode created by the phony manatee endangerment lie.

While the misinformed continue to deny the negative impact of the burgeoning local herd on the limited remaining seagrass, the USFWS and others recognize that an expanding manatee population and a decreasing seagrass supply is a recipe for disaster. It no longer matters why we are losing seagrass in the IRL. The annual winter herd has probably surpassed 2,000 manatees here in Brevard and the 4-month wintertime forage only continues to exacerbate the problem. The cause of course is the existence of warm water outflows in Port St John that encourage manatees to cut short their migration to warmer southern waters where there are over 1.4 million acres of seagrass for forage.

I just returned from the latest 2-day Manatee Forum. It is clear that USFWS is ready to move forward and address the manatee situation as it is today. The world

has changed. The manatee is thriving. Even the Save the Manatee Club has changed its tone quite a bit over the last year. Surprisingly, our Florida FWC personnel, responsible for 95% of the slow speed zones imposed on the boaters of Florida continue to fiercely defend all of the actions they have taken.

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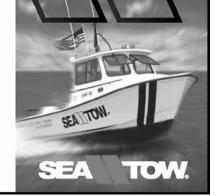


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The Year in Review

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It is not limited to their defense of past decisions. Earlier this year, even after the reclassification, our FWC representatives took it upon themselves to create unnecessary rules in areas of western Pinellas County which, like many long-ago regulated areas here in Brevard, were traditional family boating and watersports areas with very limited infrequent or no manatee usage at all. Even when the local citizens and government challenged the need, our FWC representatives dug in their heels like an obstinate child. These seemingly untouchable government employees continue to act without bound and refuse to demonstrate any compassion for the permanent impact their arbitrary and capricious actions have on us. Sadly, to what end? Even if ALL manatee watercraft mortality in ALL of Pinellas County were eliminated (less than 3 animals per year), the statistical impact on the overall population is insignificant. Even if there ever was moment in history when that level of carnage was important, it was decades ago not this year.

Somehow these FWC individuals either need to be removed from their assignments or immediately transported to the reality of 2017. It is unrealistic to seek to eliminate the random accidental manatee mortality with a population that continues to explode at 5-6% annual

growth, and it is also fiscally irresponsible and just plain insane to even address such minimal potential return on investment with the additional "cost" of the negative impact to human activity.

Amazingly, these same individuals are quick to point out how much they also did this year to help improve the impacts they have had on Florida boating. They boast about their recommendations to "improve" a few areas in the Collier County regulations - changing a handful of zones from IDLE to SLOW. That more than demonstrates how out of touch with reality these folks are.

Yes, these are the same folks that refuse to even re-evaluate the effectiveness of what they did to boating in Brevard starting in the '80s and culminating with the current conditions imposed in 2002. Have we not learned anything in the last 15 years? Has nothing changed? Is it unreasonable to consider what is working? What has added value? What has had no positive impact? All we residents of Brevard County know is that boating has been "forever" changed without recourse – until we at least get the opportunity to challenge decisions made decades ago for reasons that have long been invalidated.

AS ALWAYS – To be Continued – Because CFFW continues to WORK for YOU.❖

Harvey and Irma

Damage or Destroy More Than 63,000 Recreational Boats

November 7, 2017 – Boat Owners Association of The United States (BoatUS), the nation's largest advocacy, services and safety group for recreational boaters, estimates that more than 63,000 recreational boats were damaged or destroyed as a result of both Hurricane Harvey and Hurricane Irma, with a combined dollar damage estimate of \$655 million (boats only). These numbers are strikingly close to 2012's Hurricane Sandy, which remains the single-largest industry loss with more than 65,000 boats damaged and more than \$650 million in estimated losses.

Breaking down the 2017 season storms, Hurricane Irma damaged or destroyed 50,000 vessels with approximately \$500 million in recreational boat damage. About 13,500 boats were damaged or lost costing \$155 million in boat damage as the result of Hurricane Harvey.

"These two storms were as different as night and day," said BoatUS Marine Insurance Program Vice President of Claims Rick Wilson. "The boats that were hit the hardest by Harvey were located on a relatively small slice of Texas coast, while we saw damage to recreational vessels from Irma in every corner of Florida." The BoatUS Catastrophe

Team recently completed two months of field operations arranging for repairs, salvage or wreck removals for BoatUS Marine Insurance program members and GEICO Marine Insurance customers.

"While Hurricane Irma's losses are significant, it could have been much worse," added Wilson. "Irma ultimately traveled up Florida's West Coast and not the East, which was initially forecast. And while locations in the right front quadrant of the storm such as Big Pine Key and Marathon were hit hard with a Category 4 storm, Irma lost strength as it approached the mainland and swept up



Florida. As the storm passed east of Tampa Bay, waters receded and came back gradually, also lessening surge damage." •

Sailors need to know the difference between a salvage and tow before the worst happens

A few years ago while sailing in South Carolina I ran softly aground in a mud bank just north of Charleston. It happened as I circled to await the opening of a drawbridge.

Putting the engine in reverse didn't budge the keel, nor did trying to pull the stern off the shoal using the inflatable tender and small outboard.

Luckily, not 15 minutes elapsed before a friendly powerboater came along and offered to help. I gladly accepted and after three tries my chartered sloop was loose and afloat. We bid each other a good day and that was the end of the matter. But it could have turned out much differently, especially if the good samaritan decided to send me a salvage bill.

When I recently recounted that day's events to two maritime lawyers, both agreed the situation might have given rise to a salvage claim because my yacht was unable to maneuver in a navigable waterway under its own power and could have presented a peril to other boaters.

The good samaritan had also met the three criteria necessary to constitute salvage: he acted voluntarily, was successful in his efforts and the boat was stranded in a channel where

it might have become a danger. Although my helper seemingly did not put himself at risk, an admiralty court might have found otherwise, which would further solidify any salvage claim.

Both attorneys emphasized that in my situation, the value of the yacht was probably not high enough to warrant the expense of pursuing salvage rights.

A more lucrative scenario unfolded last October in San Francisco, when Energy, the America's Cup challenger from France, broke loose from its dock after dark and was found drifting in the bay toward the Golden Gate Bridge. A good samaritan in a skiff lassoed the errant multimillion-dollar racing catamaran and towed it to safety.

The news media heralded the deed as an act of kindness. But only days after the incident, the man's attorney notified French authorities of a pending marine salvage claim for \$200,000 plus procedural costs. The claim, now slated for arbitration, sparked debate over the difference between simple towing assistance and marine salvage and how to make a distinction.

So if I could have been in trouble when I accidentally grounded in Charleston and even America's Cup syndicates are not immune from salvage claims, how does the average sailor avoid an inadvertent salvage situation?

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United States salvage rights law traces its roots to San Francisco on August 24, 1867 when the British ship Blackwall was discovered on fire in the harbor. According to maritime attorney Joshua Teitelbaum at the Georgetown University Law Center, the Blackwall remains a litmus test for marine salvage cases.

Blackwall's officers and crew abandoned ship before dawn and the city fire department and the steam tug Goliath put out the fire.

The owner and master of Goliath brought suit against Blackwall's owners in San Francisco's district court, seeking a salvage award for their efforts. The court determined salvage is the compensation allowed to those by whose assistance a ship or her cargo has been saved, in whole or in part, from impending peril on the sea. The Goliath was awarded \$10,000, a decision affirmed on appeal.

Not much has changed since those days. Although the United States is a signatory to the Salvage Convention of 1989, an international treaty that attempts to standardize the law of salvage, most cases still lean heavily on Blackwall.

"Many misconceptions exist," Teitelbam said. "People have to understand contract salvage vs. chance salvage or what's also known as pure salvage."

If a stranger offers aid and provides aid, that is pure salvage, he said. "There are economic rationales for this doctrine.

We want to encourage people to help each other at sea, which often means in remote places where accepting aid is your only option. Keep in mind that, in general, ... (Continued on Page 8)





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you have no duty to save someone else. So salvage provides mariners with an incentive."

Unlike chance salvage, contract salvage is an agreement struck between the vessel owner and the salvor. It often occurs when an assistance company determines a vessel requires services beyond the scope of simple towing.

"The risk inherent in chance salvage is opportunism, the giving to people an incentive to help. If your boat breaks away and comes ashore during a storm, you don't have to be present or give your consent to the salvor," Teitelbaum said.

Maritime attorney Stephen F. White of Baltimore, a former U.S. Navy surface warfare officer, said gray areas exist in the realm of towing and salvage.

"There is no bright line rule," he said, noting some draw a line between soft and hard grounding. "What is a soft grounding? Are you stuck and just waiting for the tide? If so, then there is minimum marine peril. But what if the Queen Mary goes by while you're stuck and swamps you? It depends on lots of things. If two boats and two lines are required to free your yacht from a grounding, it would be considered a salvage."

The most important thing sailors should do is read the contract if they're already members

of a towing and assistance company, or get an agreement in writing if negotiating on the spot with a potential salvor, the attorney advised.

"I have had people spend half a day towing me for free. Nine times out of 10, you are dealing with people who are not in the business and don't maintain a radio watch or specialized equipment that's ready to go. So you'll be OK," White said. "As a recreational boater, you should know if you want to decline assistance, you can do so. Ask ahead of time about the terms, the hourly rate and how long they estimate the tow will take. Get it in writing, even if it's on a napkin. It should state something like, 'You are going to tow me for X amount of dollars based on a per-hour rate.' If they won't sign it, you can expect the guy is going to send you a salvage bill."

White said some companies work full time at recreational salvage and have made significant investments in equipping their sturdy and powerful rescue vessels. These businesses have a stronger argument for salvage claim compared to the part-time or weekend salvor equipped with little more than a recreational powerboat and a rope.

Potential environmental damage can also play a key role in the outcome, and is the newest element introduced into the world of marine salvage as part of the 1989 SALCON treaty.

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"If a boat runs aground in a marine sanctuary in the Bahamas, the longer it stays there the more chance there will be of a fuel or oil leak, or damage to the coral. Under modern doctrine, an admiralty court or arbitrator would take into account not only that the boat got saved, but that you saved the environment as well," White said. "Normally, if you are just drifting and waiting for a tow, you can turn down an offer of assistance from a salvor. But if a guy puts a boom around your boat because oil is spilling out of it in the wildlife sanctuary, he would have a salvage claim."

Adam Wheeler, vice president and director of towing services at the Boat Owners Association of the United States, emphasized every case is different. "When it comes to salvage vs. towing, there is no definitive answer 100% of the time."

Scott Croft, assistant vice president of public affairs at BoatU.S., said a single factor could change that dynamic, such as the approach of nightfall, foul weather or the vessel in distress begins to bounce on rocks. Vessels hard aground, on rocks, taking on water or sunk are considered salvage, as are collisions, fires and breakaways, he said, noting salvage can also be claimed if specialized equipment such as pumps and airbags are used, or divers are called, even if the boat is at the dock.

According to White, if the salvor saves the

vessel, only to learn it is a total loss, or that its post-salvage value is insufficient to pay a meaningful salvage reward, other remedies to obtain payment may be sought. In cases where saving the vessel is hopeless, the salvor may be entitled to a "special compensation" award. These awards are designed to encourage salvors to use their best efforts to minimize environmental damage, primarily oil pollution, even if the vessel is a total loss. The salvor can expect to collect the fair value of his out-of-pocket expenses, plus a fair rate for his time and equipment use.

The difference in cost between towing and salvage can be enormous. Towing a grounded \$150,000 boat could cost a few hundred dollars, but if a tow company determined that same boat was in peril because the weather is deteriorating or the grounding abuts a shipping channel, and no contractual agreement exists before services are provided, the company could demand and receive a salvage reward of \$25,000 for doing essentially the same work, White said.

Tow companies on average charge \$200 to \$250 per hour for towing services, and often impose an additional charge for soft ungroundings, usually on a per-foot basis. If the situation requires a higher degree of risk and becomes a salvage job, the salvor can seek a "discretionary" fee based on a percentage of the value of the saved boat, or

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an "objective" fee based on an hourly or per-foot formula, with additional charges for services rendered in bad weather or perilous conditions.

Croft suggested boaters carry a copy of the BoatU.S. open form yacht salvage contract aboard, which assures any salvage claim will go before a local arbitrator if negotiations between the insurance company and salvor fail. Litigation in the courts is also an option for resolving a dispute, but it can be expensive, he said. ❖

HAPPY HOLIDAYS FROM CFFW

Well it looks like the 2017 Hurricane season has finally bid us a welcome FAREWELL. Our Holiday wish for all of you is a reasonable conclusion to the repairs and cleanup efforts caused by Irma. She has had some long lasting impacts including the first year in over two decades that we were not able to enjoy our Annual Poker Run.

Additionally, Irma left us with some extra effort to assure the Merritt Island Holiday Boat Parade route was clear for navigating the nighttime event. As of this writing, we are confident that we have found enough volunteer effort to maintain the traditional event for this and many years to follow. The response

we got to our "Save Our Parade" notice and meeting was surprising – but then again- this event has had a lot of positive response for the several years it has been organized. Our calendar (cffw.org/ events) reflects the dates of both the Merritt Island (Dec 16) and the Cocoa Beach (Dec 9) Holiday Boat Parades and the Captain's Meetings.

Our friends at Merritt Island Now magazine have agreed to help promote the event and the Facebook page "I Love My Island" and our own CFFW Facebook page will have up to date information on



the Merritt Island Boat Parade. It's time to start thinking about what your boat will look like and collecting the equipment and decorations to bring your ideas to life. So many folks look forward to the annual procession of decorated boats through the central Merritt Island canals. •

CFFW WISHES YOU AND YOUR FAMILY A VERY HAPPY HOLIDAY SEASON.

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