IN THE SUPERIOR COURT

FOR THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

HANA M. KOLEK, **Plaintiff,** **vs.** **SEABRIDGE CORP., SAIPAN MARINE CORP., CABRAS MARINE CORP., GUILLERMO T. FALLER, and JOHN DOES I -THROUGH X,** **Defendants.**	**Civil Action No. 99-623B** **ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

¶1 This matter comes before the court on the motion of Defendants Seabridge Corporation ("Seabridge"), Cabras Marine Corporation ("Cabras"), Guillermo T. Faller ("Faller") and John Does 1-10, inclusive for summary judgment. Paul A. Lawlor, Esq. appeared for Defendants, and Joseph Aldan Arriola, Esq. represented the Plaintiff. The court, having heard the arguments and reviewed the memoranda of law submitted, finds that genuine issues of material fact are in dispute as to liability. Accordingly, the court denies the motion and sets this matter for trial.

I. BACKGROUND

¶2 Plaintiff Hana M. Kolek is the owner of a recreational sailing vessel known as the Kaleolani. Defendants are the owners and operators of certain tug boats and other vessels owned by Defendants Saipan Marine and Cabras and operated by Seabridge.[1/] Kolek brings this action to recover damages

[1/] *See* Declaration of Captain Guillermo Faller, attached to Defendant's Motion for Summary Judgment as Ex. "A" at ¶ 1.

sustained by the Kaleolani in October of 1997 when it collided with either the commercial Tug Husky and/or the Tug Chamorro, both of which were moored to Seabridge's private mooring in Tanapag Harbor.

¶3 Plaintiff contends that on the morning of October18, 1997, the Kaleolani was firmly secured and moored in Tanapag Harbor in preparation for Typhoon Joan. *See* Complaint at ¶14; *see also* Accident Report of Coast Guard Investigating Officer J.S. Masterson ("Coast Guard Report"), attached to Declaration of Captain Guillermo Faller ("Faller Decl.") as Ex. "A" at ¶ 6). According to Plaintiff, either the Husky or the Chamorro, or both of the vessels, broke free from their moorings, causing the Husky to collide with the Kaleolani and severely damage it (Complaint at ¶¶15-16). Defendants, not surprisingly, take a different view of events.

¶4 Defendants admit that approximately one week before the typhoon hit, they noticed the Kaleolani anchored in the vicinity of Saipan Marine's mooring location. *See* Faller Decl. at ¶ 3. When Saipan Marine's General Manager, Guillermo Faller, called the Commonwealth Ports Authority ("CPA"), he learned that the sailboat was not authorized to be there. *Id.* According to Faller, the Ports Authority did not know who owned the Kaleolani and had no means of contacting the sailboat's owner. When, during the course of securing the tugs for the oncoming typhoon, Faller noticed that sailboat was still moored to the same location, he asked a crewboat operator in the vicinity about the vessel's owner. Once again, Faller was unable to learn who owned the sailboat. *Id.* at ¶ 5.

¶5 Saipan Marine's mooring arrangement called for the Tug Chamorro to be secured to a private mooring inside Tanapag Harbor by two headlines of nylon rope and wire cable. The Tug Husky was, in turn, secured one hundred feet to the stern of the Tug Chamorro. *See* Faller Decl. at ¶ 4. By visual accounts, the Kaleolani was within the swing radius of the two tugs after the arrangements had been completed. *See* Coast Guard Report at 2, ¶ 2.

¶6 Typhoon Joan struck Saipan during the morning hours of October 18, 1997. When the winds shifted during the course of the morning, Faller observed the sailboat move within the swing radius and in line with the two tugs. He then witnessed the Kaleolani cross the mooring lines of the Tug Husky, and saw the Husky knock down the sailboat's mast. The Kaleolani sustained additional,

substantial damages. *See* Coast Guard Report at 2. Immediately after the typhoon passed, Faller notified the CPA of the casualty. *See* Faller Decl. at ¶ 7. In response to Faller's inquiry, CPA again advised him that it did not know of and thus was unable to locate the owner of the sailboat. *Id.*

¶ 7 Under CPA's Harbor Rules and Regulations, it is unlawful for small craft, such as a sailboat, to moor or anchor in areas under the control of the CPA without the specific authorization of the Port Superintendent. *See* Commonwealth Ports Authority, Harbor Rules and Regulations § 3.35 (d)(1) (1994). Defendants point out that no application was made and no permission was ever given by CPA to the owner or operator of the Kaleolani to moor its vessel in Tanapag Harbor. *See* Declaration of Art Guerrero ("Guerrero Decl."), attached to Mot. for Sum. Judg. as Exhibit "B" at ¶ ¶3-4. According to Art Guerrero, who serves as the Seaport Assistant Manager for Operations for the CPA, only Saipan Marine was authorized to moor its vessels in Tanapag Harbor by agreement with CPA. Guerrero Decl. at ¶ 5. Defendants thus claim that as a matter of law, the Kaleolani's failure to comply with Port regulations and otherwise make arrangements for the safe mooring of the vessel render the Plaintiff strictly liable for any damage caused thereby. Defendants essentially contend that when a vessel is anchored or moored in an improper place and is damaged, the owners of the injured vessel bear the consequences.

¶8 Although Plaintiff asserts that the Kaleolani was safely and securely moored, she does not dispute or otherwise provide proof that the Kaleolani was authorized to moor in Tanapag Harbor.[2/] Nor does Plaintiff offer any evidence to establish that the regulations governing mooring and anchoring in the harbor were indiscriminately or arbitrarily enforced. In her Amended Complaint, however, Plaintiff contends that the mooring lines of the Kaleolani had been removed from the Navy buoy and transferred haphazardly to one of the sinkers on the Seabridge mooring. *See* Amended Complaint at ¶ 27. Although Plaintiff fails to submit any competent evidence to substantiate her allegations that the Kaleolani had been moved,[3/] she also maintains that Defendants negligently

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[2/] *See* Opposition at 2, citing Amended Complaint at ¶ 20.

[3/] Unsworn statements and suggestions of counsel that are not part of the record cannot properly be considered by the trial court in disposing of a motion for summary judgment. *See Adickes v. Kress & Co.*, 398 U.S. 144, 157-158 n.17, 90 S.Ct. 1590, 1608, n.17, 26 L.Ed.2d 142 (1970).

failed to secure the Husky and the Chamorro properly in order to avoid causing damage to the Kaleolani.

ISSUES

¶9 Whether Plaintiff's failure to comply with port regulations governing anchoring and mooring in public harbors constitutes negligence *per se*, rendering Plaintiff strictly responsible for all damages incurred by the Kaleolani.

¶10 Whether the disposition of Plaintiff's negligence claims is governed by the law of the Commonwealth, admiralty law, or both.

ANALYSIS

¶11 In their Motion, Defendants assert that there are no genuine issues of material fact preventing the court from ruling that Plaintiff's failure to comply with port regulations renders her negligent and thus liable for any damages sustained thereby. Plaintiff's position is directly opposite: Plaintiff argues that at best, Defendants' allegations raise a claim for contributory negligence which, according to Plaintiff, cannot relieve Defendants from the consequences of their own negligent conduct. Opp. at 2:19-22. What both parties avoid discussing, however, is what law is to be applied to these facts: whether principles of federal maritime law govern, whether the law of the Commonwealth is dispositive, or both. Notwithstanding the disinclination of the parties even to address these issues, the court must first determine: (1) whether maritime law or the law of the Commonwealth governs this action; (2) if maritime law applies, whether the CNMI Superior Court has jurisdiction to adjudicate an action based on maritime law; and (3) if maritime law applies, what legal principles govern the outcome of this case.

A. This Action Arises under Maritime, and not CNMI Law.

¶12 This is an action for negligence occurring in the Commonwealth. As such, the law of the Commonwealth would, ordinarily, be applicable. In the Commonwealth, the rules of the common law, as set forth in the Restatements of the Law, serve as the applicable rules of decision in the absence of written or local customary law to the contrary. *See* 7 CMC § 3401; *Ito v. Macro Energy*,

4 N.M.I. 47 (1993). However, in *Grubhart v. Great Lakes Dredge & Dock Co.*,[4/] the United States Supreme Court listed circumstances that, when they exist, trigger the application of federal maritime law. Maritime law, as opposed to state or territorial law, is applicable to any action which occurs: (1) on a vessel; (2) in navigable waters; (3) has a potential impact on maritime commerce; and (4) bears a substantial relationship to traditional maritime activity. *Grubhart*, 513 U.S. at 533-534, 115 S.Ct. 1048.

¶13 Applying the four prong *Grubhart* analysis to the instant case, it is undisputed that the Kaleolani was injured by either one or two commercial tugs while moored in Tanapag harbor. With respect to the first part of the *Grubhart* test, the common definition of the term "vessel" includes "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation by water." 1 T. Schoenbaum, ADMIRALTY AND MARITIME LAW [hereinafter, "SCHOENBAUM"] § 3.6 (2d ed.1994), citing 1 U.S.C. § 3. Accordingly, the Kaleolani and the two tugs qualify as "vessels."

¶14 Regarding the second prong of the *Grubhart* analysis, a body of water is "navigable" for purposes of admiralty jurisdiction if it is used, or is susceptible of being used, as an artery of commerce. *See Adams v. Montana Power Co.*, 528 F.2d 436 (9th Cir. 1975). In the instant case, the accident occurred between two vessels moored in Tanapag Harbor. It is undisputed that the waters of Tanapag Harbor transport various and sundry vessels engaging in commercial shipping, as well as other commercial activity, every day. As such, the court finds that the waters of Tanapag Harbor, CNMI, are, for purposes of admiralty jurisdiction, navigable waters. Having determined that the alleged tort occurred on a vessel in navigable waters, the court now considers whether the accident at issue has the potential to disrupt maritime commerce.

¶15 Two decisions of the United States Supreme Court are dispositive. At issue in *Formost Ins. Co. v. Richardson*[5/] and *Sisson v. Ruby*[6/] were two incidents involving recreational vehicles on

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[4/] 513 U.S. 527, 115 S.Ct. 1043, 130 L.Ed.2d 1024 (1995).

[5/] 457 U.S. 668, 102 S.Ct. 2654, 73 L.Ed.2d 300 (1982).

[6/] 497 U.S. 358, 366-67, 110 S.Ct. 2892, 111 L.Ed.2d 292 (1990).

navigable water. In determining whether each accident had the potential to disrupt maritime commerce, the Supreme Court considered whether the collision might require the diversion of commercial craft from their chosen course of navigation. *See Formost,* 457 U.S. at 675. In *Sisson*, a case involving a burning recreational vessel, the Supreme Court found that the burning of the boat on navigable water, where the fire spread to the marina and to other boats within close proximity, likewise constituted a potential impact on maritime commerce. Thus, in addressing the potential impact of an incident on maritime commerce, the threshold issue is whether a possibility of disrupting the commercial activities of other maritime operators exists, and not whether it actually affected commerce in the specific case. In the case before the court, a sailboat was severely damaged during a typhoon in navigable waters, in close proximity to other commercial vessels. The court takes judicial notice, moreover, that commercial vessels, commercial fisherman, as well as boats ferrying tourists to and from the nearby island of Managaha, are located nearby. Given the potential for a drifting, damaged sailboat to disrupt commercial activity and the fact that this case involves a collision on navigable waters, the court finds the circumstances of this accident demonstrate the potential to affect maritime commerce.

¶16 In addressing the final prong of the *Grubart* test, the court considers the general character of the activity giving rise to the claim, and whether such activity has a substantial relationship to traditional maritime activity. Traditional maritime activity is satisfied if either the alleged tortfeasor or the injured party is a traditional maritime actor, or at least if either of those parties is performing a traditional maritime activity. *See Watson on Behalf of Watson v. Massman Const. Co.,*850 F.2d 219, 220-21 (5th Cir.1988). Plainly the defendant vessels were engaged in traditional maritime activities. As such, the court finds that the case falls within the court's admiralty jurisdiction, and that general maritime law applies in this case. *See Yamaha Motor Corp. v. Calhoun,* 516 U.S. 199, 206, 116 S.Ct. 619, 623, 11 L.Ed.2d 578 (1996); *Pope & Talbot, Inc. v. Hawn,* 346 U.S. 406, 74 S.Ct. 202, 98 L.Ed. 143 (1953).[7/]

[7/] *See also Stanton v. Bayliner Marine Corp.,* 123 Wash.2d 64, 74, 866 P.2d 15 (1993), *cert. denied,* 513 U.S. 819, 115 S.Ct. 78, 130 L.Ed.2d 32 (1994).

¶17 The consequence of being an admiralty case is that substantive admiralty law applies. *See Genetic Intern. v. Cormorant Bulk Carriers, Inc.,* 887 F.2d 806, 808 (9th Cir. 1989). A negligence cause of action may be invoked by virtually anyone who suffers injury or loss in an admiralty setting. *See, e.g., Federal Marine Terminals , Inc. v. Burnside Shipping Co.,* 394 U.S. 404, 416-417, 89 S.Ct. 1144, 1151, 22 L.Ed.2d 371 (1969). Because the plaintiff vessel sustained injuries in navigable waters, because Defendants were engaged in activity substantially related to traditional maritime activity, and because the incident was of the sort with the potential to disrupt maritime commerce, the court concludes that this dispute is cognizable under a maritime negligence cause of action.

B. This Court Has Jurisdiction to Adjudicate This Matter Based on Maritime Law

¶18 The fact that federal maritime law is involved, however, does not mean that federal courts have exclusive jurisdiction or that state law is automatically displaced or supplanted. *See Grubart* 513 U.S. at 545, 115 S.Ct. at 1054; *see also American Dredging Co. v. Miller,* 510 U.S. 443, 446, 114 S.Ct. 981, 985, 127 L.Ed.2d 285 (1994) ("Federal-court jurisdiction over such cases ... has never been entirely exclusive"). Since 1789, state and territorial courts have been authorized to entertain in personam maritime causes of action concurrently with federal courts, where relief could be obtained by common law or state remedies in maritime cases. *See Madruga v. Superior Court of California,* 346 U.S. 556, 560-561, 74 S.Ct. 298, 98 L.Ed. 290 (1954).[8/] Because the elements of a maritime negligence cause of action are essentially the same as those required under a common law negligence cause of action, this maritime claim may be brought in state or territorial court. *See*

[8/] *See* Judiciary Act of Sept. 24, 1789, § 9, 1 Stat. 73, 76-77. Article III, section 2 of the United States Constitution extends the judicial power of the United States to all cases of admiralty and maritime jurisdiction. Thus, 28 U.S.C. § 1333, the language of which traces back to the Judiciary Act of 1789, gives federal district courts exclusive jurisdiction in admiralty cases " saving to suitors in all cases all other remedies to which they are otherwise entitled." It is from the "saving to suitors" clause in the statute that state courts derive in personam admiralty jurisdiction, thereby creating an area of concurrent state and federal jurisdiction. Admiralty jurisdiction is thus 'exclusive' in the federal courts only as to those maritime causes of action begun and carried on as proceedings in rem, that is, where a vessel or thing is itself treated as the offender and made the defendant by name or description in order to enforce a lien. *See, e.g., The Moses Taylor,* 71 U.S. (4 Wall). 411, 427, 18 L.Ed. 397 (1866). It is this kind of in rem proceeding which state courts cannot entertain. Under the Judiciary Act, state courts were "competent" to adjudicate maritime causes of action in proceedings "in personam," that is, where the defendant is a person, not a ship or some other instrument of navigation. *See Rounds v. Cloverport Foundry & Machine Co.,* 237 U.S. 303, 306-309, 35 S.Ct. 596, 597- 598, 59 L.Ed. 966 (1915).

Garrett v. Moore-McCormack Co., 317 U.S. 239, 245, 63 S.Ct. 246, 87 L.Ed. 239 (1942). What is unclear is the extent to which the CNMI or the states may apply their own law in maritime cases.

¶17 Where admiralty law is specifically invoked, both procedural and substantive maritime law applies exclusively. Where, as here, admiralty is not specifically invoked, the plaintiff may still under the saving-to suitors clause: (1) bring the maritime action in state court; (2) preserve certain procedural rights, despite the application of federal maritime law;[9/] and (3) utilize substantive local law as long as local law does not conflict with general maritime law.[10/] The same substantive law, however, applies to the claim regardless of the forum -- a type of "reverse-Erie" doctrine which requires that the remedies afforded by the states conform to governing federal maritime standards. *See Offshore Logistics, Inc., v. Tallentire*, 477 U.S. 207, 222-223, 106 S.Ct. 2485, 2494, 91 L.Ed.2d 174 (1986). Thus, as to Plaintiff's claim for damages sounding in negligence and occurring in or on navigable waters, it does not matter whether Plaintiff characterized her claim in terms of CNMI law, federal law, or both: federal maritime law is controlling. *Pope & Talbot, Inc*., 346 U.S. at 409, 74 S.Ct. at 204.

C. General Maritime Law

¶18 Inasmuch as admiralty jurisdiction applies, the court now turns to whether substantive admiralty law preempts the application of the Commonwealth's rule of contributory negligence. Unlike today, the CNMI had no statute or customary law regarding contributory negligence at the time of the occurrence in question.[11/] Thus, under the law of the Commonwealth at the time of the

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[9/] *See Ghotra by Ghotra v. Bandila Shipping, Inc.*, 113 F.3d 1050 (9th Cir. 1997) (a plaintiff electing to sue in state court retains the right to a jury trial.

[10/] What is saved under the "saving to suitors" clause is not a remedy at common law but a common law remedy.

[11/] Under principles of law applicable to this case, contributory negligence is conduct by the plaintiff that fell below the standard to which she should have conformed for her own protection and which contributed as a legal cause to her injury. *See Ito v. Macro Energy, Inc.*, 4 N.M.I. 47, (1993), quoting RESTATEMENT (SECOND) TORTS § 463 (1965). To eliminate contributory negligence as a total bar to recovery, on October 19, 2000, the Legislature enacted the Uniform Comparative Fault Act, which, among other things, required that damages be apportioned on the basis of fault and provided for a one year period within which to commence an action for contribution. See P.L. No. 12-26. The Uniform Comparative Fault Act applies to all causes of action accruing after its effective date and thus has no retroactive effect. *See* P.L. 12-26, § 10.

occurrence in question, Plaintiff's contributory negligence could bar her recovery. *See, e.g.*, RESTATEMENT (SECOND) TORTS § 467 (1964) ("Except where the defendant has the last clear chance, the plaintiff's contributory negligence bars recovery against a defendant whose negligent conduct would otherwise make him liable to the plaintiff for the harm sustained by him"); *see also* P.L. 12-26, § 10 (Uniform Comparative Fault Act is not retroactive).[12/]

¶19 Under admiralty law, however, when a person is injured by the negligence of another but contributes to his injuries through his own negligence, the doctrine of pure comparative negligence applies, and his recovery is reduced proportionately by the percentage by which his own negligence contributed to his injury. *See United States v. Reliable Transfer Co.*,421 U.S. 397, 95 S.Ct. 1708, 44 L.Ed.2d 251 (1975); *Schumacher v. Cooper*, 850 F.Supp. 438, 455 (D.S.C.1994). Thus, in contrast to the law of the Commonwealth, a claimant may still recover under the law of Admiralty, even though he is more at fault than the defendant. A judgment for damages pursuant to CNMI law, which would bar recovery if a plaintiff is more negligent than the defendant, would thus directly conflict with federal admiralty law.[13/]

¶20 In *American Dredging Co. v. Miller*, 510 U.S. 443, 114 S.Ct. 981, 127 L.Ed.2d 285, the United States Supreme Court applied a two-part test governing admiralty common-law preemption. In determining whether to apply state or territorial law, the court must first determine whether state law (1) works material prejudice to a characteristic feature of maritime law, or (2) interferes with the harmony and uniformity of maritime law. *See American Dredging Co.*, 510 U.S. at 447, 114

[12/] *Compare* RESTATEMENT (THIRD) TORTS § 7 (1999) ("Plaintiff's negligence (or the negligence of another person for whose negligence the plaintiff is responsible) that is a legal cause of an indivisible injury to the plaintiff reduces the plaintiff's recovery in proportion to the share of responsibility the factfinder assigns to the plaintiff (or other person for whose negligence the plaintiff is responsible"); P.L. 12-26.

[13/] Derived from both state and federal sources, "general maritime law is an amalgam of traditional common-law rules, modifications of those rules, and newly created rules." *East River S.S. Corp.*, 476 U.S. at 864-65, 106 S.Ct. at 2299. When there are no clear precedents in the law of admiralty, courts may "look to the law prevailing on the land." *Igneri v. Cie. de Transports Oceaniques*, 323 F.2d 257, 259 (2d Cir.1963), *cert. denied*, 376 U.S. 949, 84 S.Ct. 965, 11 L.Ed.2d 969 (1964).

S.Ct. 981. If either condition exists, maritime law must prevail. *Id.*[14/] Here, the court concludes that the test is satisfied in both instances.

¶21 With respect to the first criteria, the court notes that over the years, the Supreme Court has employed various formulations for identifying characteristic features of maritime law. *See, e.g.*, *Madruga,* 346 U.S. at 561, 74 S.Ct. at 301; *Pope & Talbot,* 346 U.S. at 409-410, 74 S.Ct. 204-205. More recently, the Supreme Court explained that a characteristic feature of maritime law is one that either originated in admiralty or has exclusive application in admiralty. *See American Dredging Co.,* 510 U.S. at 449-450, 114 S.Ct. 981. Comparative fault is such a feature.

¶22 Although its origins are somewhat obscure, early English common law suggests that comparative fault first appeared in admiralty and medieval sea codes.[15/] Concepts of comparative fault first emerging in North American jurisprudence, moreover, likewise originated in English admiralty law. *See* Prosser and Keeton, TORTS § 67, at 471 (5th ed. 1984). The United States Supreme Court's decisions in *Pope & Talbot*[16/] and *Kermarec v. Compagnie Generale Transatlantique*[17/] leave no doubt that comparative fault is a characteristic feature of maritime law. Indeed, other courts have recognized as much, concluding that the early comparative fault principle of "division of damages" is "deeply rooted in admiralty" and is therefore "an essential and characteristic feature of the substantive law of admiralty." *See Intagliata v. Shipowners & Merchants Towboat Co.*, 26 Cal.2d 365, 373, 159 P.2d 1, 7 (1945); *see also, Scudero v. Todd Shipyards Corp.,* 63 Wash.2d 46, 52-53, 385 P.2d 551, 555 (1963). More than a century ago,

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[14/] State law should be applied only where there is no governing federal statute or judicially created admiralty rule and where there is no likelihood of jeopardizing the uniformity of admiralty practice. *See Bohemia, Inc. v. Home Ins. Co.,*725 F.2d 506, 510 (9th Cir.1984); *Stanton v. Bayliner Marine Corp.,* 866 P.2d at 1113. In applying state law, courts should apply the general common law rather than the law of any particular state so as to further the goal of uniformity. *Id.*

[15/] *See* Turk, *Comparative Negligence on the March,* 28 CHI-KENT L. REV. 189, 220-225 (1950); Mole and Wilson, *A Study of Comparative Negligence,* 17 CORNELL L Q. 333, 337-339 (1932); (considering that contributory negligence worked a complete bar to recovery, the courts of admiralty "early showed their displeasure over the practical working of the common-law rule ... and, desiring to overcome the obvious hardships that arose from its application, formulated more just rules for determining who should bear the loss").

[16/] 346 U.S. 406, 74 S.Ct. 202, 98 L.Ed. 143 (1953),

[17/] 358 U.S. 625, 79 S.Ct. 406, 3 L.Ed.2d 550 (1959), *overruled on other grounds,* 398 U.S. 375 (1959).

moreover, the maritime law exchanged the common law's rule of contributory negligence for one of comparative negligence. *See, e.g., The Max Morris*, 137 U.S. 1, 14-15, 11 S.Ct. 29, 34 L.Ed. 586 (1890); *Pope & Talbot*, 346 U.S. at 408-409, 74 S.Ct. 202. Given this background, the court concludes, as it must, that comparative fault is a characteristic feature of maritime law.

¶23 Applying contributory negligence as an absolute bar, as Defendants suggest, would more than "materially prejudice" the comparative fault doctrine: it would eviscerate it. Under admiralty law, contributory negligence, however gross, only mitigates damages and does not bar recovery. *Farr v. NC Machinery Co.*, 186 F.3d 1165, 1166 (9th Cir. 1999). Consequently, even if Plaintiff breached some statutory duty or failed to comply with a port regulation enacted to prevent the harm at issue, it should not totally bar recovery in this case. The court therefore concludes that the need for uniform application of comparative fault requires that maritime law preempt inconsistent CNMI law in existence at the time of the accident. *See, e.g., Miller v. American President Lines*, 989 F.2d 1450, 1462 (6th Cir. 1993); *Beveridge v. Lewis*, 939 F.2d 859, 862 (9th Cir.1991) (applying preemption analysis); *Hendricks v. Transportation Servs. of St. John*, 41 V.I. 21, 28, 1999 WL 395121 (Virgin Is. 1999). *See also Cammon v. City of New York*, 95 N.Y.S.2d 583, 744 N.E.2d 114 (2000) (admiralty rule of comparative negligence preempts inconsistent state rule). Therefore, it is the ruling of this court that in this case, fault must be judged under a comparative negligence standard. Since the initial fault of one vessel does not exempt other vessels from the duty of complying with applicable rules of navigation or of using such precautions as good judgment and seamanship require, however,[18/] Defendants' motion for summary judgment is, at this juncture, DENIED.

SO ORDERED this 13th day of September, 2001.

BY THE COURT:

[18/] *See United States v. Reliable Transfer Co., Inc.*, 421 U.S. 397, 411, 95 S.Ct. 1708, 1715-16, 44 L.Ed.2d 251 (1975).

/S/

TIMOTHY H. BELLAS, Associate Judge