

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
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5 THE UNITED STATES OF AMERICA,)
6)
7 Plaintiff,) No. 2:19-cv-231
8)
9 v.)
10)
11 TRIDENT SEAFOODS CORP.,)
12 Royal Viking, Inc., Golden Dawn, LLC)
13)
14 Defendants.)
15 _____)
16

17 **SECOND MATERIAL MODIFICATION TO CONSENT DECREE**
18

19 WHEREAS the United States of America and Defendants Trident Seafoods
20 Corporation (“Trident”), Royal Viking, Inc., and Golden Dawn, LLC (collectively, “the
21 Parties”) are Parties to a Consent Decree (ECF No. 2-1) entered by this Court on May 20,
22 2019 (ECF No. 8) and modified by the First Material Modification entered by this Court on
23 June 14, 2024 (ECF. No. 11);

24 WHEREAS, the First Material Modification modified Section VI of the Consent
25 Decree, which describes the process and timelines by which Defendants must retrofit or retire
26 certain Large Appliances with a full charge of 5,000 pounds or more of Class I or Class II
27 refrigerant, by replacing the schedule set forth in Paragraph 46 of the Consent Decree with
28 the following:
29

Retrofit or Retirement Date	Vessel
By January 31, 2022	<i>Island Enterprise</i>

By January 31, 2026	Both the <i>Eastern Wind</i> and the <i>Independence</i>
By January 31, 2030	<i>Seattle Enterprise</i>
By January 31, 2032	<i>Starbound</i>

WHEREAS, in December 2024, Defendants requested a further modification to the retrofit schedule set forth in Paragraph 46 to switch the retirement deadlines of the *Independence* and the *Seattle Enterprise*, thereby extending Defendants' deadline to retrofit or retire the pertinent Large Appliances on the *Independence* to January 31, 2030;

WHEREAS, Defendants represent that switching the two vessels' retirement dates is necessary because of additional necessary capital expenditures, issues relating to the company's fishing seasons and repair schedule, and the unique aspects relating to each vessel and its ability to provide services to Trident's greater fleet;

WHEREAS, due to differences in the size of refrigerant appliances and applicable leak rates, switching the deadlines of the *Seattle Enterprise* and the *Independence* may lead to additional releases of refrigerant into the atmosphere;

WHEREAS, because of this likelihood of additional refrigerant releases, the Parties have negotiated additional changes to the Consent Decree's Compliance Requirements (Section V), Retrofits of Large Appliances with Full Charge of 5,000 or More Pounds of Class I or Class II Refrigerant (Section VI), Annual Refrigerant Loss Cap Program (Section VIII), Third Party Verification (Section IX), and Stipulated Penalties (Section XIII) provisions in order to monitor and offset the likelihood of these additional releases;

WHEREAS, in accordance with the Parties' agreement for early retirement of the *Seattle Enterprise* as part of this proposed Second Material Modification, Trident certified on

June 12, 2025 that it retired all Large Appliances with a Full Charge of 5,000 or More Pounds of Class I or Class II Refrigerant on the *Seattle Enterprise*.

WHEREAS, these additional changes to the Consent Decree include, among others, additional inspection and leak testing requirements, the development of an enhanced mechanical integrity inspection program and additional third party inspections on the *Independence*, an agreement for early retirement of the *Seattle Enterprise*, and agreed changes to the refrigerant loss cap provisions;

WHEREAS, this Second Material Modification made herein constitutes a material change to the Consent Decree, requiring Court approval under Paragraph 154 of the Consent Decree because (1) the deadline to retrofit or retire the *Independence* has been extended by four years and (2) Defendants' obligations under Sections V, VI, VIII, IX, and XIII of the Consent Decree have also been modified;

WHEREAS, the Parties recognize, and the Court by entering this Second Material Modification finds, that this Modification has been negotiated by the Parties in good faith and that this Modification is fair, reasonable, and in the public interest;

NOW THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

1. Except as specifically modified herein, all provisions of the Consent Decree entered by this Court on May 20, 2019 (ECF No. 8) and First Material Modification to Consent Decree entered by this Court on June 14, 2024 (ECF No. 11) shall remain unchanged and in full force and effect.

2. Paragraph 11 shall be amended to add the following:

k. "Enhanced Mechanical Integrity Inspection Program' shall mean the

1 program required by Section V.K.”

2 3. Paragraph 18 shall be amended to add the following as indicated in bold and
3 italicized text:

4 18. “Medium Appliances. Consistent with the terms of this Consent
5 Decree, if Defendants decide to retrofit an existing Medium Appliance or purchase, ***rent, or***
6 ***otherwise acquire***, a new Medium Appliance, the Medium Appliance must use a
7 Replacement Refrigerant or an “exempt substitute,” as defined in 40 C.F.R. §§ 82.152 and
8 82.154(a)(1).”

9 4. Paragraph 20 shall be amended to add the following:

10 n. Procedures for implementing the Enhanced Mechanical Integrity Inspection
11 Program in accordance with Section V.K.

12 5. Paragraph 28 shall be amended to add the following as indicated in bold and
13 italicized text:

14 28. Large Appliances with a Full Charge of 5,000 or more pounds of Class I
15 or Class II refrigerant. At least once each Calendar Year beginning January 1, 2019, **and for the**
16 ***Independence at least twice each Calendar Year beginning January 1, 2026***, Defendants
17 shall evacuate each Large Appliance with a Full Charge of 5,000 or more pounds of Class I or
18 Class II refrigerant to the level specified in 40 C.F.R. § 82.156, Table 1. Defendants shall then
19 pressurize the entire system to a pressure in excess of atmospheric pressure that is sufficient to
20 check for and identify leaks in accordance with Paragraph 37. Each comprehensive leak test and
21 inspection conducted in accordance with this Paragraph shall be conducted at least six months
22 apart from its prior and subsequent test and inspection. Nothing in this Paragraph shall be

1 construed to limit Defendants' ability to conduct additional comprehensive leak tests and
2 inspections beyond those required by this Paragraph.

3 6. Paragraph 34 shall be amended to add the following new Paragraph 34(b) and
4 re-number as follows:

5 34. Large Appliances with a Full Charge of 5,000 or more pounds of Class
6 I or Class II refrigerant on Vessels.

7 *a.* Beginning January 1, 2019, for each Large Appliance with a Full
8 Charge of 5,000 or more pounds of Class I or Class II refrigerant at any Vessel or Facility, when
9 each such Large Appliance is charged with refrigerant, Defendants shall conduct inspections on
10 each Component of the Large Appliance, except those Components that are Pumped-out and
11 Isolated or Pumped Down, subject to the limitations of 40 C.F.R. § 82.157(g)(3), on a rolling
12 basis, such that each Component in operation is inspected at least once every fifteen (15) Days in
13 accordance with Paragraph 37.

14 *b. Beginning January 1, 2026, for each Large Appliance with a*
15 *Full Charge of 5,000 or more pounds of Class I or Class II refrigerant on the Independence*
16 *or Starbound, when each such Large Appliance is charged with refrigerant, Defendants shall*
17 *conduct inspections on each Component of the Large Appliance, except those Components*
18 *that are Pumped-out and Isolated or Pumped Down, subject to the limitations of 40 C.F.R. §*
19 *82.157(g)(3), on a rolling basis, such that each Component in operation is inspected at least*
20 *once every seven (7) Days in accordance with Paragraph 37. Except as explicitly provided in*
21 *this Paragraph 34.b, Defendant's obligations pursuant to Paragraph 34.a remain unchanged.*

22 *c.* During an Extended Lay-up, Defendants are not required to inspect
23 Components that are Pumped-out and Isolated or Pumped Down. During an Extended Lay-up,

Defendants shall inspect any Component which has not been Pumped-out and Isolated or Pumped Down at least once every thirty (30) Days.

7. Section V. (Compliance Requirements) shall be amended to add the following additional compliance requirement at the end of Section V:

K. Enhanced Mechanical Integrity Inspection Program

No later than January 1, 2026, Defendants shall implement an Enhanced Mechanical Integrity Inspection Program to cover all external piping associated with Large Appliances with a full charge of 5,000 pound or more of Class I or Class II refrigerant on the Independence. The Enhanced Mechanical Integrity Inspection Program shall include:

- a. Procedures for conducting at least one comprehensive non-destructive evaluation on all external piping by a NDT Level II American Society for Non-Destructive Testing (ANST) certified non-destructive evaluation technician by January 1, 2027;
- b. Procedures for conducting annual inspections of external piping surface, insulation, and vapor barrier by a trained inspector;
- c. Procedures for conducting non-destructive testing meeting all ANST standards;
- d. Qualifications for inspectors conducting annual inspections;
- e. Qualifications for non destructive test technicians to interpret inspection results, such that any test technician must meet a minimum NDT Level II certification by ANST;
- f. Requirement to hire a qualified non destructive test technician to interpret the results of inspections and produce a report of findings; and

g. Requirement to repair identified leaks in external piping or any other deficiencies based on the technician's findings and appropriate corrosion loss tables.

8. Paragraph 46 shall be amended as follows (deletions are indicated in strikeout text and additions are indicated in bold and italicized text):

46. Consistent with the terms of this Consent Decree, Defendants must retrofit or retire any Large Appliances with a Full Charge of 5,000 or more pounds of Class I or Class II refrigerant on each of the following Vessels in accordance with the following schedule:

Retrofit or Retirement Date	Vessel
By January 31, 2022	<i>Island Enterprise</i>
By <i>June 15, 2025</i>	<i>Seattle Enterprise</i>
By January 31, 2026	Both the Eastern Wind and the Independence
By January 31, 2030	Seattle Enterprise <i>Independence</i>
By January 31, 2032	<i>Starbound</i>

Each Large Appliance that is retrofitted in accordance with this Paragraph shall be retrofitted to use an "exempt substitute," as defined in 40 C.F.R. §§ 82.152 and 82.154(a)(1).

9. Paragraph 61 shall be amended to add the following as indicated in bold and italicized text:

61. Release Limits. In each Reporting Year, if Class I or Class II refrigerant is released from Defendants' Program Appliances in an amount that equals or exceeds the following Release Limits, then Defendants shall undertake the following actions:

- a. ***Prior to January 1, 2026, if the amount of Class I and Class II refrigerant released from all Program Appliances exceeds 17.5%, as calculated below, Defendants shall develop and execute a Corrective Action Plan in accordance with Paragraph 66.***
- b. ***Beginning on January 1, 2026, or any time thereafter, if the amount of Class I and Class II refrigerant released from all Program Appliances exceeds 12.5% as calculated below, Defendants shall develop and execute a Corrective Action Plan in accordance with Paragraph 66;***
- c. ***Beginning January 1, 2026, or any time thereafter, if the amount of Class I and Class II refrigerant released from a single Large Appliance with a Full Charge of 5,000 or more pounds of Class I or Class II refrigerant on the Independence or Starbound exceeds 25% as calculated below, Defendants shall develop and execute a Corrective Action Plan in accordance with Paragraph 66;***
- d. ***Prior to January 1, 2026, if the amount of Class I and Class II refrigerant released from all Program Appliances exceeds 25%, as calculated below, in addition to the Corrective Action Plan required by Paragraph 61.a, Defendants shall be liable for stipulated penalties in accordance with Paragraph 112.***
- e. ***Beginning January 1, 2026, or any time thereafter, if the amount of Class I and Class II refrigerant released from all Program Appliances exceeds 17.5%, as calculated below, in addition to the Corrective Action Plan required by***

Paragraph 61.b, Defendants shall be liable for stipulated penalties in accordance with Paragraph 112.

f. Beginning January 1, 2026, or any time thereafter, if the amount of Class I and Class II refrigerant released from a single Large Appliance with a Full Charge of 5,000 or more pounds of refrigerant on the Independence or Starbound exceeds 25% for two consecutive Calendar Years, as calculated below, in addition to the Corrective Action Plan required by Paragraph 61.c, Defendants shall be liable for stipulated penalties in accordance with Paragraph 112.

10. The first sentence of Paragraph 66 shall be amended to cross-reference updated Paragraph references as indicated in bold and italicized text:

66. Corrective Action Plan. If Class I or Class II refrigerants are released from Defendants' Program Appliances during the previous calendar year in an amount exceeding the Corrective Action Release Limit in Paragraph 61.a, **.b, or .c**, Defendants shall submit by April 1 of the current calendar year a Corrective Action Plan that describes Defendants' strategy for preventing exceedances of the Corrective Action Release Limit in the current Calendar Year.

11. Paragraph 76 shall be amended to add the following as indicated in bold and italicized text:

76. Physical Audits. Beginning January 1, 2019, and until any Large Appliance subject to this Paragraph has been retrofitted or retired (e.g., according to Paragraphs 46 and 47, the Auditor will conduct annual Physical Audits to assess compliance at each Vessel or Facility containing a Large Appliance with a Full Charge of 5,000 or more pounds of Class I or Class II refrigerant. Within thirty (30) Days of the Auditor being retained, and by August 1

each year beginning January 1, 2019, Defendants will provide the Auditor an anticipated annual schedule for Seattle or Tacoma Vessel arrivals, and for planned system evacuation and pressure testing timeframes for each Vessel with Large Appliances subject to this Paragraph. Within two (2) weeks of receiving the Vessel schedule, the Auditor will send the Defendants and EPA a schedule for Physical Audits. The Auditor will select and audit at least 50% of Vessels with Large Appliances covered by this Paragraph each year, with each Vessel audited at least every two (2) years. ***Beginning January 1, 2026, the Auditor must select and audit the Independence and Starbound annually.*** Vessel crew will be available upon arrival and for up to three (3) Days after arrival if prearranged by the Auditor. Periodic updates to the schedule may be provided if significant changes are made to the schedule. Defendants will confirm the Vessel arrival schedule with the Auditor thirty (30) Days prior to arrival of the Vessel, and again seven (7) Days prior to arrival of the Vessel. Schedules for pressure testing will be confirmed with the Auditor at the time the contractor is scheduled to perform the pressure test, and the Auditor will be updated of any changes to the schedule.

12. Paragraph 112 shall be amended as follows (deletions are indicated in
strikeout text and additions are indicated in bold and italicized text):

112. Annual Refrigerant Loss Cap Program. Starting January 1, 2019, if, in a calendar year, Defendants release Class I or Class II refrigerant in an amount that equals or exceeds the Stipulated Penalty Release Limit described in Paragraph 61. ~~bd, .e, or .f~~, Defendants shall pay a stipulated penalty of \$50 for each pound of refrigerant released up to 5.5% in excess of the Stipulated Penalty Release Limits ~~(that is, if the total amount of Class I and Class II refrigerant released is between 25% and 30.5% of the total charge of all Program Appliances)~~, \$75 for each pound of Class I and Class II refrigerant released from 5.5% to 35% in excess of the

1 Stipulated Penalty Release Limits ~~(that is, if the amount of Class I and Class II refrigerant~~
2 ~~released is between 30.5% and 60% of the total charge of all Program Appliances)~~, and \$100 for
3 each pound of Class I and Class II refrigerant released over 35% in excess of the Stipulated
4 Penalty Release Limits ~~(that is, if the amount of Class I and Class II refrigerant released exceeds~~
5 ~~60% of the total charge of all Program Appliances)~~.

6 13. This Modification shall be lodged with this Court for a period of at least thirty
7 (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United
8 States reserves the right to withdraw or withhold its consent if the comments regarding this
9 Modification disclose facts or considerations indicating that this Modification is
10 inappropriate, improper, or inadequate. Defendants consent to entry of this Modification as
11 proposed without further notice and agree not to withdraw from or oppose entry of this
12 Modification by the Court or to challenge any provision of this Modification, unless the
13 United States has notified Defendants in writing that the United States no longer supports
14 entry of this Modification.

15 14. Each undersigned representatives of the Assistant Attorney General for the
16 Environment and Natural Resources Division of the United States Department of Justice, on
17 behalf of the United States, certifies that he is fully authorized to enter into the terms and
18 conditions of this Modification and to execute and legally bind the Party he or she represents
19 to this Modification.

20 15. This Modification to the Consent Decree constitutes the final, complete, and
21 exclusive agreement and understanding among the Parties with respect to this Modification to
22 the Consent Decree, and this Modification supersedes all prior agreements and
23 understandings, whether oral or written, concerning the Modification embodied herein. The

1 modifications herein are reflected in the modified Consent Decree attached as Exhibit A to
2 this proposed Modification. In the event of a conflict between Exhibit A and this
3 Modification, this Modification controls.

4 16. The This Modification may be executed in counterparts, and its validity shall
5 not be challenged on that basis.

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7 Dated and entered this ____ day of _____, 2025.

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10 _____
11 JOHN C. COUGHENOUR

12 SENIOR UNITED STATES DISTRICT JUDGE
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14 Respectfully submitted,

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17 ADAM R.F. GUSTAFSON
18 Acting Assistant Attorney General
19 U.S. Department of Justice
20 Environment and Natural Resources Division
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1 FOR DEFENDANT TRIDENT SEAFOODS CORPORATION, ROYAL VIKING, INC., and
2 GOLDEN DAWN, LLC.:
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