Honourable David Tkachuk  
Chair  
Standing Senate Committee on Transport and Communications  
The Senate of Canada  
Ottawa, Ontario  
Canada, K1A 0A4

Dear Mr. Chair,

Re: Proposed amendments to the Canada Shipping Act and Marine Liability Act – Bill C-86

Thank you for the opportunity to share these brief comments on the proposed amendments to the Canada Shipping Act and Marine Liability Act.

Inuvialuit are pleased to see amendments that aim to protect marine environments, enhance environmental response by strengthening the Canadian Coast Guard’s authorities to intervene, modernize Canada’s Ship-Source Oil Pollution Fund, enhance deterrence by increasing the penalty amount and support research and innovation. From the perspective of those that live and work in – and depend daily upon – the marine environment, these updated protections are welcome.

One of the proposed amendments however, in the context of this Canada Shipping Act, causes some concern. Bill C-86 proposed the following:

(2) Section 10 of the Act is amended by adding the following after subsection (2): Exemption power of Minister of Transport

(2.1) The Minister of Transport may, with respect to his or her responsibilities under this Act, exempt for a period of not more than three years any person or vessel or class of persons or vessels from the application of any provisions of this Act or the regulations, subject to any conditions that the Minister considers appropriate, if the exemption would allow the undertaking of research and development, including in respect of any type of vessels, technologies, systems, components or procedures and practices that may, in the Minister’s opinion, enhance marine safety or environmental protection.
Having spoken with departmental staff, Inuvialuit understand that the goal of this amendment is the enabling of modernized technologies and systems in the unique Arctic environment. That is a reasonable ambition.

However, this proposed authority does not account for the existing authority of the co-management bodies under the Inuvialuit Final Agreement to screen and review research and development that is proposed for the Inuvialuit Settlement Region – both onshore and offshore. Compounding this, the Canada Shipping Act does not, in the same likeness as other statutes, contain a non-derogation clause,¹ which helps to outline the de minimis standard that those interpreting and implementing the statute must meet. The concern is that in obtaining an exemption, a proponent may believe that they are permitted to proceed with the undertaking without first engaging with Inuvialuit and completing the required screening and review processes.

Further, the proposed exemption authority does not seem to place limits on the exemptions that may be extended if, in the Minister’s opinion, the end result may be enhanced marine safety or environmental protection. This would include, for example, Section 188 of the Canada Shipping Act, which states: “If a vessel is required by the regulations to have a shipboard oil pollution emergency plan, the vessel shall take reasonable measures to implement the plan in respect of an oil pollution incident”.

The Inuvialuit Final Agreement contains express rights to wildlife harvest in the Beaufort Sea and Arctic Ocean areas of the Inuvialuit Settlement Region. Ministerial authorizations that undermine the quality and enjoyment of these rights would constitute an infringement of the Inuvialuit Final Agreement and a failure to uphold Canada’s international commitment to uphold the right of Indigenous peoples to the conservation and protection of the environment under Article 29 of the United Nations Declaration on the Rights of Indigenous Peoples².

Inuvialuit therefore respectfully recommend that this proposed provision be modified to expressly acknowledge the requirement that exemption holders uphold Indigenous and treaty rights in their research and/or development and to limit the available exemptions to those that would not expose Indigenous settlement areas and rights holders to risk without their free prior and informed consent.

¹ See, for example, S. 2.1 of the Oceans Act, which states: For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the Constitution Act, 1982.
² UNDRIP Art. 29, 1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. 2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. 3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.
Regards,

INUVALUIT REGIONAL CORPORATION