Cour d'appel fédérale

Date: 20120209

Docket: A-2-11

Ottawa, Ontario, February 9, 2012

CORAM: NADON J.A.

SHARLOW J.A. MAINVILLE J.A.

BETWEEN:

MINISTER OF FISHERIES AND OCEANS

Appellant

and

DAVID SUZUKI FOUNDATION, DOGWOOD INITIATIVE,

ENVIRONMENTAL DEFENCE CANADA, GEORGIA STRAIT ALLIANCE,

GREENPEACE CANADA, INTERNATIONAL FUND FOR ANIMAL

WELFARE, RAINCOAST CONSERVATION SOCIETY, SIERRA CLUB

OF CANADA and WESTERN CANADA WILDERNESS COMMITTEE

Respondents

JUDGMENT

The appeal is allowed in part, declaration 1(d) of the Federal Court's judgment is quashed in part, and it is replaced by the following declaration:

Ministerial discretion does not legally protect critical habitat within the meaning of section 58 of the *Species at Risk Act*, and it was unlawful for the Minister to

have	cited	provisions	of	the	Fisheries	Act	in	the	Killer	Whales	Protection
Statement where such provisions are subject to ministerial discretion.											

The costs of this appeal are awarded to the respondents.

"M. Nadon"
J.A.