

Chapter 2

The Endangered Species Act Moves East

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§ 2.01. Introduction and Overview.

Since its passage in 1973, the Endangered Species Act has primarily affected the western United States. Because of the high amount of federal ownership of western land, which triggers federal government obligations under the Act, and the volume of listed species and designated critical habitat in the western states, the Endangered Species Act is a routine consideration in most western development projects. Recently, the U.S. Fish and Wildlife Service has been listing more species and designating more critical habitat in the eastern part of the country. As the volume of eastern listed species and extent of eastern critical habitat rises, the Endangered Species Act has become increasingly relevant in a range of eastern development projects, ranging from oil and gas to wind development projects. This chapter provides a basic grounding in the Act, explores the reasons for the eastern “migration” of the Act, and highlights new developments in the regulatory implementation of the Act.

§ 2.02. Predecessors of the Endangered Species Act.²

Before 1900, control over wildlife generally remained with the States. Based on the Supreme Court decision in *Geer v. Connecticut*,³ states had the right “to control and regulate the common property in game,” which was to

² For a detailed discussion of the development of federal wildlife law, see Michael J. Bean and Melanie J. Rowland, *The Evolution of National Wildlife Law* (3 ed. 1997). See also Donald C. Baur and Wm. Robert Irvin, *Endangered Species Act – Law, Policy, and Perspectives* (2d ed. 2010).

³ *Geer v. Connecticut*, 161 U.S. 519 (1896).