



# Killing Endangered Species: What's Reasonable Self-Defense?

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In *United States v. Wallen*, the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) recently held that a defendant charged with killing a grizzly bear cub in violation the [Endangered Species Act](#) enjoys a complete defense if he “actually, even if unreasonably, believe[s] his actions were necessary to protect himself or others.”

Wallen [lives](#) in “bear country” in Montana with his wife and three children. Bear cubs had broken into his chicken coop, scattered and killed some of the chickens, and frightened his children who were nearby playing. When the three cubs returned later than night, Wallen killed all three. Although he earlier offered several conflicting accounts to federal authorities, Wallen testified at trial that he killed two of the cubs when they came upon him in his yard at night while he was surrounded by his chickens. He claimed that he killed the third cub when it charged him shortly thereafter.

Wallen was [charged](#) under the Endangered Species Act and tried before a federal magistrate judge. The statute recognizes a self-defense [exception](#) if the defendant “committed the offense based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual, from bodily harm from any endangered ... species.” The judge [concluded](#) that Wallen’s self-defense claim was “objectively unreasonable.” He sentenced Wallen to three years’ probation, beginning with 60 days detention, and ordered Wallen to pay \$15,000 in restitution. Wallen appealed. The district court affirmed. The Ninth Circuit vacated the conviction and returned to case to the lower court on good faith, self-defense grounds.

The appellate court [pointed out](#) that the common law justification of self-defense, one that would have been in play had the statute been silent, calls for an objectively reasonable standard – would a reasonable person in the defendant’s position have believed he was in imminent danger. The statute’s good faith language changed all of that. The court [concluded](#) that a “good faith belief defense ... ordinarily depends on a defendant’s subjective state of mind, and the defense is not automatically precluded by evidence that

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the state of mind was objectively unreasonable.” A judge may assess the credibility of a defendant’s claim of good faith. Yet, the test is whether the defendant believed that he or someone else were threatened with immediate injury, not whether a reasonable person similarly situated would agree, the court [advised](#).

Congress [established](#) the Endangered Species Act’s good faith, self-defense provision after an elderly couple was prosecuted for killing a grizzly bear that threatened them. Congress remains free to revisit that decision at any time, should it elect to do so.

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