

**COMPLAINT**  
**VIOLATION OF 49 U.S.C. § 41310 BY DELTA AIR LINES, INC.**

**TO:**

Department of Transportation  
Attention: Aviation Enforcement and Proceedings  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

**AGAINST:**

Delta Air Lines, Inc.  
Mr. Edward H. Bastian, CEO  
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**DATE:**

Originally submitted July 19, 2016  
Re-submitted November 1, 2016

**VIOLATION ALLEGED:**

Unreasonable discrimination in foreign air transportation against persons, places, ports, and types of traffic in violation of 49 U.S.C. § 41310.

**SUMMARY OF CASE:**

1. Conservation Force and Corey Knowlton bring this Complaint against Delta Air Lines, Inc. ("Delta") for violation of 49 U.S.C. § 41310. Delta is continuously violating § 41310 by imposing a discriminatory embargo on the transport of trophies obtained in licensed, regulated tourist safari hunts. Although Delta will transport hunting trophies from

other species, it refuses to carry African elephant, leopard, lion, rhino, and Cape buffalo trophies (the “Big Five”). Delta’s embargo violates § 41310, which expressly prohibits “unreasonable discrimination against persons, places, ports, and types of traffic in foreign air transportation.” This embargo unreasonably discriminates against federally-permitted Big Five hunters who wish to ship trophies back to the U.S., African countries who depend on licensed, regulated hunting as a conservation tool and primary source of operational funds, and lawfully-acquired Big Five trophies.

2. Complainants are a 501(c)(3), non-profit organization and an individual tourist safari hunter. Complainant Conservation Force was formed for purposes of conserving wildlife and wild places and represents the force of sportsmen and women who underwrite wildlife and habitat conservation and recovery programs in the U.S. and Africa. Complainant Corey Knowlton contributed \$350,000 to black rhino protection and recovery in Namibia. He hunted a black rhino on a license issued by Namibia’s Ministry of Environment and Tourism, an export permit authorized by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES), and an “enhancement” import permit issued by the U.S. Fish and Wildlife Service (the “FWS”). Although Mr. Knowlton had all necessary paperwork authorizing the regulated black rhino hunt, subsequent export from Namibia, and enhancement import into the United States, Delta refused to transport his black rhino trophy.<sup>1</sup>

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<sup>1</sup> Mr. Knowlton made this contribution through a conservation auction organized by Conservation Force and Dallas Safari Club in coordination with Namibia’s Ministry. The auction drew national and international attention. Two of the UN-affiliated International Union for Conservation of Nature (“IUCN”) specialist groups wrote letters supporting this auction because of the recovery and management support it provided to Namibia’s black rhino. IUCN Sustainable Use and Livelihoods Specialist Group, Letter (Dec. 11, 2013), available at [https://www.savetherhino.org/assets/0001/3809/Dallas\\_Safari\\_Club\\_Black\\_Rhino\\_Hunt\\_IUCN\\_Sustainable\\_Livelihoods\\_Comment\\_Dec\\_2013.pdf](https://www.savetherhino.org/assets/0001/3809/Dallas_Safari_Club_Black_Rhino_Hunt_IUCN_Sustainable_Livelihoods_Comment_Dec_2013.pdf); IUCN African Rhino Specialist Group, Letter (Nov. 22, 2013).

3. Licensed, regulated tourist safari hunting is the basis of the conservation system of the Southern and Eastern African nations that secure and manage the world's largest populations of elephant, leopard, lion, rhino, and buffalo. In these nations, safari hunting creates incentives to preserve more than double the habitat (more than five times as much in Tanzania) in hunting areas compared to national parks.<sup>2</sup> Hunting revenues provide most of the operating budget for wildlife authorities and underwrite most anti-poaching at the government, operator, and community levels.<sup>3</sup>

4. Licensed, regulated tourist safari hunting has led to re-conversion of land from livestock or agriculture to wildlife. Rural communities are incentivized to protect wildlife because they share a significant percentage of hunting fees. For instance, in Namibia, the community share is 100%; in Tanzania, it is 75% of block and permit fees; in Zimbabwe, it is 100% divided among villages (55%), rural district councils (41%), and the national community association (4%). The community revenue is used for individual distributions, building classrooms and clinics, enhancing the water supply, buying medicines and training clinic staff, paying school fees, and much more. In addition, villages typically receive voluntary contributions of meat, goods, and services from safari operators. These benefits incentivize rural communities to protect wildlife as an asset, and not to kill it as a nuisance, threat, or black-market commodity.<sup>4</sup> These incentives depend on a healthy tourist safari hunting industry, which is at risk due to Delta's discriminatory embargo.

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<sup>2</sup> *E.g.*, IUCN, Briefing Paper, (Apr. 2016), available at [http://cmsdata.iucn.org/downloads/iucn\\_informing\\_decisionsontrophyhuntingv1.pdf](http://cmsdata.iucn.org/downloads/iucn_informing_decisionsontrophyhuntingv1.pdf).

<sup>3</sup> *E.g., id.*; Zim attacks proposed ban on trophy hunting, says millions in potential revenue under threat, The Source (July 14, 2016), available at <http://source.co.zw/2016/07/zim-attacks-proposed-ban-on-trophy-hunting-says-millions-in-potential-revenue-under-threat/>.

<sup>4</sup> *E.g.*, R. Naidoo et al., Tourism & hunting provide complementary benefits to communal conservancies in Namibia, *Conservation Biology* (2015), available at <http://onlinelibrary.wiley.com/doi/10.1111/cobi.2012643/pdf>; C. Jonga, Trophy Imports Suspension Impact on CAMPFIRE Communities, NewsDay

5. Experts have engineered the hunting of these species as “conservation hunting,” and experts have repeatedly affirmed its value to wildlife recovery. Based on the benefits generated, the FWS has repeatedly concluded that the hunting “enhances the survival of the species” and authorized imports of Big Five trophies.<sup>5</sup> The CITES Parties have also repeatedly set quotas to facilitate international trade in the trophies of listed species.<sup>6</sup>

6. U.S. hunters represent most big game hunters in Africa. They will pay significant fees for the opportunity to hunt dangerous game and bring home the skin, skull, teeth, tusks, claws, or other parts as treasured reminders of the experience. These trophies are among a hunter’s most valued possessions because they represent the hunt’s success and honor the animal.

7. Delta’s ban on transport of Big Five trophies has a chilling effect on U.S. hunters because the trophy is such an essential and tangible reminder of the hunting experience. Delta’s statements about its embargo also conflate the lawfully-acquired trophies of licensed, regulated hunting with the contraband, which stigmatizes Big Five hunters and further dissuades them. Discouraging U.S. citizens from hunting the Big Five will reduce the fees and benefits this hunting provides and will damage both the species and the rural communities living alongside them.

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Zimbabwe (June 24, 2014), available at <https://www.newsday.co.zw/2014/06/24/trophy-imports-suspension-impact-campfire-communities/>.

<sup>5</sup> *E.g.*, FWS, Final Rule, Revision of the Section 4(d) Rule for the African Elephant, 81 Fed. Reg. 36388, 36393-94 (June 6, 2016); FWS, Final Rule, Listing Two Lion Subspecies, 80 Fed. Reg. 80000, 80018 (Dec. 23, 2015); FWS, Enhancement finding for import of a sport-hunted black rhino trophy taken in Namibia during 2013 (Apr. 6, 2015); FWS, Frequently Asked Questions, Straight-Horned Markhor (2014), available at <https://www.fws.gov/home/feature/2014/pdf/MarkhorFAQs-fRuleFinal.pdf>; FWS, Questions & Answers for Black Rhino/USFWS Statement on Dallas Safari Club Auction (Oct. 29, 2013), available at <http://www.fws.gov/international/permits/black-rhino-import-permit.html#13>; FWS, Enhancement Finding for African Elephants Taken as Sport-Hunted Trophies in Zambia during the 2011 Hunting Season (Oct. 3, 2011).

<sup>6</sup> *E.g.*, CITES Conference of the Parties, Res. Conf. 14.7, Res. Conf. 13.5, Res. Conf. 10.14.

## **FACTUAL AND LEGAL BACKGROUND**

8. It is legal to possess and transport sport-hunting trophies of protected species once the appropriate permits (export and import) are issued under CITES and the Endangered Species Act (“ESA”).

9. CITES governs international trade in hunting trophies (and other specimens) among its 182 member countries. The ESA governs imports into the United States of African elephant, leopard, lion, rhino, and other “listed” species. (Cape buffalo are not listed.) There is a lot of regulation of listed species, including CITES Resolutions, findings, and permits, and ESA rules, findings, and permits. This comprehensive regulation ensures that the lawful international movement of hunting trophies is “not detrimental” to the survival of the species and under the ESA, that it “enhances the survival of the species.” Under both CITES and the ESA, tourist safari hunting is used to encourage and fund wildlife management and recovery in range nations.<sup>7</sup>

10. Delta initially seemed to understand and abide by this international and national regulation and authorization of the transport of hunting trophies. On April 21, 2015, South African Airways (“SAA”) announced it would no longer transport the trophies of legally hunted “rhino, elephant, lion, and tiger,” even when accompanied by valid CITES permits. Almost immediately, a “Change.org” petition was posted to coerce Delta into taking a

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<sup>7</sup> *E.g.*, CITES Conference of the Parties, Res. Conf. 13.5 (“financial benefits derived from trophy hunting of a limited number of specimens will benefit the conservation of the species directly and provide additional incentives for conservation and habitat protection”); FWS, Revision of the Section 4(d) Rule for the African Elephant, 81 Fed. Reg. 36388 (June 6, 2016) (“We continue to believe sport hunting, as part of a sound management program, can provide benefits to the conservation of the species ... Trophy hunting can generate funds to be used for conservation, including for habitat protection, population monitoring, wildlife management programs, and law enforcement efforts”); FWS, Enhancement Finding for Import of a Sport-Hunted Black Rhino Trophy Taken in Namibia (Apr. 6, 2015) (“Based on the success of implementing the Black Rhino Conservation Strategy for Namibia, the use of funds generated from black rhino hunts, and the biological need for such harvests, the Branch of Permits has found the import of this sport-hunted black rhinoceros from Namibia ... meets the criteria for issuing an import permit under the ESA...”).

similar position. Delta initially refused to be bullied by an Internet petition. Delta issued a statement confirming it would “accept hunting trophies in accordance with all U.S. domestic and international regulations. Customers are required to produce detailed documentation of trophies to U.S. Customs and Border Patrol officials as their trophies undergo inspection.” In short, Delta acknowledged that permitted hunting trophies are lawful and proper to transport.

11. On July 20, 2015, SAA reversed its position and began to accept trophies of rhino, elephant, and lion again (tiger are not hunted).

12. In July 2015, a U.S. citizen hunted “Cecil the lion” in a private conservancy in Zimbabwe, and the landowner and professional hunter were investigated for failing to have an allocated quota for the hunt. The U.S. citizen has not been charged in Zimbabwe or the U.S. However, that hunt drew unprecedented, and frequently inflammatory and inaccurate attention from news media and social media.

13. On August 3, 2015, amid the media furor, Delta announced:

Effective immediately, Delta will officially ban shipment of all lion, leopard, elephant, rhinoceros and buffalo trophies worldwide as freight. Prior to this ban, Delta’s strict acceptance policy called for absolute compliance with all government regulations regarding protected species. Delta will also review acceptance policies of other hunting trophies with appropriate government agencies and other organizations supporting legal shipments.

14. South Africa’s Minister of Environmental Affairs welcomed SAA’s decision to lift the ban and emphasized how the ban “incorrectly failed to distinguish between the trade and transportation of legally acquired wildlife specimens, and the illegal trade in wildlife.” She further noted: “The legal, well-regulated hunting industry in South Africa is valued at around R 6.2b[illion] a year and is a source of much needed foreign exchange, job creation, community development and social upliftment.” The Minister voiced “disappointment”

with Delta's decision because the embargo does not distinguish between hunting trophies acquired legally or illegally.<sup>8</sup>

15. Namibia's Minister of Environment and Tourism echoed this sentiment. He "stressed the important role that trophy hunting plays" for Namibia's economy, communities, and conservancies. Namibia's Minister warned that Delta's trophy embargo "is significantly impacting the Namibian economy."<sup>9</sup>

16. Evaluating Delta's decision, an industry consultant said "Delta was probably responding to pressure following the news of Cecil's killing."<sup>10</sup> Complainants were told Delta claimed to have received many comments from activists in the wake of the "Cecil mania."

17. As a common carrier certificated by the Federal Aviation Administration ("FAA"), it is illegal for Delta to "respond to pressure," discriminate against an unpopular and non-hazardous cargo, and refuse carry it. Delta's embargo runs against international law, U.S. law and regulation, and the public policy of sustainable use. It unreasonably discriminates against Big Five hunters and their trophies and against certain African countries. For these reasons, Delta's embargo on Big Five trophies violates § 41310.

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<sup>8</sup> Minister E. Molewa, Legal, regulated hunting has a role to play in conserving species, *The Daily Maverick* (Aug. 4, 2015), available at <http://www.dailymaverick.co.za/opinionista/2015-08-04-legal-regulated-hunting-has-a-role-to-play-in-conserving-species/>.

<sup>9</sup> Minister P. Shifeta, quoted in *Banning Trophy Hunting Would Harm Conservation*, *Namibian Sun* (Aug. 5, 2015), <http://www.namibiansun.com/crime/banning-trophy-hunting-would-harm-conservation.82312>.

<sup>10</sup> W. Cummings, *Airlines ban hunters' big-game "trophies" after uproar over "Cecil the lion,"* *USA Today* (Aug. 4, 2015), <http://www.usatoday.com/story/travel/flights/todayinthesky/2015/08/03/american-airlines-animal-trophy-ban/31090331/>.

**LEGAL CLAIM AND RELIEF REQUESTED  
VIOLATION OF 49 U.S.C. § 41310**

18. As a common carrier holding a certificate issued by the FAA, Delta must abide by federal law. Federal law prohibits discrimination against passengers, places, or cargo. Section 41310(a) provides: “An air carrier or foreign air carrier may not subject a person, place, port, or type of traffic in foreign air transportation to unreasonable discrimination.” 49 U.S.C. § 41310(a).

19. Delta has embargoed a specific type of people (Big Five hunters), specific places and ports (the Southern and Eastern African countries that allow and depend on licensed, regulated hunting), and a specific type of traffic (Big Five trophies) in foreign air transportation (transport from Africa to the U.S.). This is clear discrimination, and it is clearly unreasonable. Big Five trophies are not hazardous. Delta still transports hunting trophies, just not of these species. Delta embargoed these species because irresponsible media coverage of “Cecil the lion” rendered hunting of these species unpopular for a period of time. Delta imposed this embargo based only on media and social media posts, not for any reason relating to the transport itself. But as explained above, licensed, regulated hunting is an essential part of the conservation systems of African countries like Namibia, South Africa, Tanzania, Zambia, and Zimbabwe. It benefits these species. Delta’s embargo discourages and chills hunting to the detriment of the countries that allow it and the wildlife they protect and manage. The embargo violates § 41310 because, without any justification, Delta is discriminating against people, places and ports, and cargo.

20. Delta’s embargo is unreasonable because it violates the public policy evident in the CITES Convention and its implementing resolutions, which establish and support the trade and transport of hunting trophies. The embargo violates the public policy reflected in the



ESA. It nullifies ESA enhancement import permits authorized and issued by the FWS, directly obstructing the intended recovery and survival of four of the five species embargoed (Cape buffalo are not listed). It denies elephant, leopard, lion, and rhino the enhancement of survival intended by the issuance of the FWS import permits. And it runs against the public policy of sustainable use, which depends on licensed, regulated, and limited tourist safari hunting to generate revenue for wildlife authorities to fund anti-poaching, recovery, and management; to incentivize local people to tolerate and positively value the listed species; and to preserve habitat for recovery of these species. Delta is unreasonably and wrongly prohibiting legal, fully regulated trade. It has been reckless in establishing this embargo, as exemplified by the inclusion of Cape buffalo.

21. Delta's unreasonable embargo injures Complainants, current or potential Delta customers. Complainant Conservation Force represents and advocates for its member-supporters, including Mr. Knowlton. Mr. Knowlton's rhino horn is one of the many Big Five trophies rejected by Delta. Delta was the airline of choice for U.S. hunters because it was a U.S. airline that flew directly to Africa. Now it is more difficult for a hunter to ship his or her trophy, which has caused delays and increased expenses, or the canceling or postponing of African hunting safaris. These conservation-minded hunters are also feeling the personal slight of being confused with traffickers – when they are, in fact, seeking to participate in an internationally recognized conservation activity on which range states, and the wildlife they sustain, depend.

22. Complainant Conservation Force represents African safari operators, wildlife authorities, and the local communities who depend on tourist safari hunting income. Each is also damaged by this embargo.

23. Safari operators are suffering decreased revenue due to increased transport difficulty and stigma for U.S. Big Five hunters. These operators are the front line of habitat protection and anti-poaching, but their ability to effectively fill this role is being diminished.

24. Similarly, decreased hunting reduces the operating revenues for range state wildlife authorities. For example, approximately 80% of the Tanzanian wildlife authority's anti-poaching funding comes from hunting fees. Similarly, Zimbabwe's wildlife authority "derives the bulk of its operational funding from hunting revenues."<sup>11</sup> The Big Five and other species will suffer most if these authorities have fewer resources to fight poaching, monitor populations, and sustain recovery. Complainants and those they represent will suffer from declining wildlife populations – the result of declining policing and management.

25. Finally, Delta's embargo will reduce the benefits of sustainable use to the rural people who depend on tourist safari hunting for meat, salaries, and community projects. Hunting fees accrue to the community by law, contract, or both, and are invested in bettering community livelihoods. Meat from successful hunts is a direct, immediate benefit to villages.<sup>12</sup> Without critical incentives, dangerous Big Five wildlife are liabilities to rural people – and are treated as such.<sup>13</sup> Delta's ban on transport of Big Five trophies damages the interests of all these stakeholders, for no reason.

26. Accordingly, Complainants request an Order barring Delta from enforcing its unreasonable embargo on Big Five trophies, and requiring Delta to carry such trophies.

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<sup>11</sup> Zim Attacks Proposed Ban on Trophy Hunting, *The Source* (July 14, 2016).

<sup>12</sup> *E.g.*, R. Naidoo et al. (2015); N. Onishi, A hunting ban saps a village's livelihood, *The New York Times* (Sept. 12, 2015), available at <http://www.nytimes.com/2015/09/13/world/a-hunting-ban-saps-a-villages-livelihood.html>.

<sup>13</sup> *E.g.*, Marauding elephants kill one person, destroy crops in North Tanzania, *Minggu* (June 19, 2016), <http://www.antaranews.com/en/news/105290/marauding-elephants-kill-one-person-destroy-crops-in-north-tanzania>; B. Keakabetse, Communities in Ngamiland Have Given Government Ultimatum to Partially Lift the Hunting Ban (June 24, 2016), <http://www.mmegi.bw/index.php?aid=61044&dir=2016/june/24>.

27. Complainants further request a finding that Delta's embargo violates § 41310.

28. If Delta refuses to comply with the Department's Order, Complainants request that the FAA revoke Delta's certificate to operate as an air carrier in foreign air transportation.

29. Pursuant to 18 U.S.C. § 1001, I, in my individual capacity and as the authorized representative of Complainants, have not in any manner knowingly and willfully falsified, concealed, or failed to disclose any material fact, made any false, fictitious, or fraudulent statement, or knowingly used any documents which contain such statements in preparation, filing, or prosecution of this pleading. I understand that an individual who is found to have violated 18 U.S.C. § 1001 shall be fined or imprisoned not more than five years, or both.

Resubmitted on November 1, 2016<sup>14</sup>

Respectfully submitted,



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<sup>14</sup> This complaint was originally submitted to the FAA's Office of the Chief Counsel on July 19, 2016. The FAA did not act on it until November 1, 2016 when it was apparently transferred to the Office of the Secretary of Transportation, and Complainants were directed to file the complaint in an online docket and to serve the complaint directly upon Delta.