

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION/IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED

Count One: 33 U.S.C. §§ 1319(c)(1), 1321(b)(3) - (Clean Water Act - Negligent Discharge of a Pollutant); Petty
 Minor
 Count Two: 16 U.S.C. §§ 703 and 707(a) - (Migratory Bird Treaty Act) Misdemeanor
 Felony

E-filing

PENALTY: Count One: 1 year imprisonment, \$100,000 fine, 1 year supervised release, \$25 special assessment.
 Count Two: 6 months imprisonment, \$15,000 fine, 1 year supervised release, \$10 special assessment

Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEFENDANT - U.S.
 JOHN JOSEPH COTA
 DISTRICT COURT NUMBER

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)
U.S. COAST GUARD/ENVIRONMENTAL PROTECTION AGENCY

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

this is a reprosecution of charges previously dismissed which were dismissed on motion of:
 U.S. ATTORNEY DEFENSE } **SHOW DOCKET NO.**

this prosecution relates to a pending case involving this same defendant } **MAGISTRATE CASE NO.**

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

DEFENDANT

IS NOT IN CUSTODY
 Has not been arrested, pending outcome this proceeding.
 1) If not detained give date any prior summons was served on above charges
 2) Is a Fugitive
 3) Is on Bail or Release from (show District)

IS IN CUSTODY
 4) On this charge
 5) On another conviction } Federal State
 6) Awaiting trial on other charges
 If answer to (6) is "Yes", show name of institution

Has detainer been filed? Yes No } If "Yes" give date filed

DATE OF ARREST Month/Day/Year

Or... if Arresting Agency & Warrant were not
DATE TRANSFERRED TO U.S. CUSTODY Month/Day/Year

Name and Office of Person Furnishing Information on this form JOSEPH P. RUSSONIELLO
 U.S. Attorney Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned) STACEY GEIS/DAVID JOYCE

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:
 SUMMONS NO PROCESS* WARRANT Bail Amount: _____
 If Summons, complete following:
 Arraignment Initial Appearance
 Defendant Address: _____
 Date/Time: _____ Before Judge: _____
 Comments: _____

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

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FILED
MAR 17 AM 11:53
PHILIP W. HANCOCK
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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16 United States of America

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

22 UNITED STATES OF AMERICA,
23 Plaintiff,
24 v.
25 JOHN JOSEPH COTA,
26 Defendant.

No. CR
VIOLATIONS:
Title 33 U.S.C. §§ 1319(c)(1)(A),
1321(b)(3) (Clean Water Act) (one
count)(a Class A misdemeanor);
Title 16 U.S.C. §§ 703, 707
(Migratory Bird Treaty Act) (one count)
(a Class B Misdemeanor)

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1 **INFORMATION**

2 The United States Attorney charges:

3 **INTRODUCTION**

4 At all times relevant to this Information:

5 1. The *M/V Cosco Busan* was a 901 foot, 65,131 gross ton container ship registered in
6 Hong Kong and bearing IMO number 9231743.

7 2. The Defendant, JOHN JOSEPH COTA, was a resident of Petaluma, California,
8 and was a member of the San Francisco Bar Pilots. COTA was licensed both by the
9 United States Coast Guard and the State of California as a Pilot. COTA had been
10 employed as a Pilot in San Francisco Bay since 1981.

11 3. On November 7, 2007, the *M/V Cosco Busan* departed the Port of Oakland in
12 heavy fog and struck the Delta span of the San Francisco Bay Bridge, which resulted in
13 the discharge of approximately 58,000 gallons of heavy fuel oil and caused environmental
14 damage, including the loss of migratory birds.

15 **LEGAL FRAMEWORK**

16 **The Clean Water Act and the Oil Pollution Act**

17 4. In the Federal Water Pollution Control Act (the "Clean Water Act"), as amended
18 by the Oil Pollution Act, 33 U.S.C. § 1321(b)(1), Congress has declared that it is the
19 policy of the United States that there should be no discharges of oil or hazardous
20 substances into or upon the navigable waters of the United States or the adjoining
21 shorelines.

22 5. The Clean Water Act makes it a crime for a person to negligently discharge oil into
23 or upon the navigable waters or contiguous zone of the United States in such quantities as
24 may be harmful. 33 U.S.C. §§ 1319(c)(1) and 1321(b)(3).

25 6. The Clean Water Act defines a "discharge" as any spilling, leaking, pumping,
26 pouring, emitting, emptying or dumping. 33 U.S.C. § 1321(a)(2). The Clean Water Act
27 defines "oil" as oil of any kind or in any form, including, but not limited to, petroleum,
28 fuel oil, sludge and oil residue. 33 U.S.C. § 1321(a)(1).

1 7. Federal regulations promulgated under the Clean Water Act define a “harmful”
2 quantity of oil as including any discharges of oil that cause a film or sheen upon or
3 discoloration of the surface of the water or adjoining shorelines or cause a sludge or
4 emulsion to be deposited beneath the surface of the water or adjoining shorelines. 40
5 C.F.R. § 110.3

6 8. The Clean Water Act defines the “navigable waters” of the United States as the
7 waters of the United States and the territorial seas, which are defined to be water
8 extending three (3) miles seaward of the ordinary low tide mark. 33 U.S.C. §§ 1362(7)
9 and 1362(8). Navigable waters also includes internal waters, which are “the waters
10 shoreward of the territorial sea baseline.” 33 C.F.R. §§ 2.24(a); 2.36. San Francisco Bay
11 is a navigable waterway of the United States.

12 The Migratory Bird Treaty Act

13 9. The Migratory Bird Treaty Act (“MBTA”) makes it unlawful for any person, at any
14 time, by any means or in any manner, to take or kill any migratory bird without a permit
15 or as otherwise provided by regulation. 16 U.S.C. §§ 703, 707(a).

16 10. The term “take” in the MBTA includes killing or wounding. 50 C.F.R. § 10.12.

17 11. The Brown Pelican (*Pelecanus occidentalis*), Marbled Murrelet, (*Brachyramphus*
18 *marmoratus*), and Western Grebe, (*Aechmophorus occidentalis*), among others, are listed
19 as migratory birds pursuant to the MBTA. 50 C.F.R. § 10.13.

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**Count One -- 33 U.S.C. §§ 1319(c)(1), 1321(b)(3)
(Clean Water Act – Negligent Discharge of a Pollutant)**

12. Paragraphs 1-8 are realleged and incorporated by reference as though fully set forth herein.

13. On or about November 7, 2007, in San Francisco Bay, within the Northern District of California, the defendant,

JOHN JOSEPH COTA,

did negligently cause the discharge of oil in such quantities as may be harmful from a vessel, the *M/V Cosco Busan*, into and upon the navigable waters of the United States, without a permit. Specifically, on or about November 7, 2007, Defendant Cota, while piloting the *M/V Cosco Busan*, caused approximately 58,000 gallons of heavy fuel oil to be discharged from the vessel into San Francisco Bay by acting in a negligent manner, that included the following: (a) failing to pilot a collision free course; (b) failing to adequately review with the Captain and crew of the *M/V Cosco Busan* prior to departure the official navigational charts of the proposed course, the location of the San Francisco Bay aids to navigation, and the operation of the vessel's navigational equipment; (c) departing port in heavy fog and then failing to proceed at a safe speed during the voyage despite limited visibility; (d) failing to use the vessel's radar while making the final approach to the Bay Bridge; (e) failing to use positional fixes during the voyage; and (f) failing to verify the vessel's position vis-à-vis other established and recognized aids to navigation throughout the voyage.

All in violation of Title 33, United States Code, Sections 1319(c)(1)(A) and 1321(b)(3), a Class A misdemeanor.

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