

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 1: 18 U.S.C. § 1001 (False Statements)  Petty  
 Count 2: 18 U.S.C. § 1001 (False Statements)  Minor  
 Count 3: 33 U.S.C. §§ 1319(c)(1), 1321(b)(3) (Clean Water Act - Negligent Discharge of a Pollutant)  Misdemeanor  
 Count 4: 16 U.S.C. §§ 703 and 707(a) (Migratory Bird Treaty Act)  Felony

**PENALTY:** Count 1 & 2: 5 years imprisonment, \$250,000 fine, 3 years supervised release, \$100 special assessment; Count 3: 1 year imprisonment, \$100,000 fine, 1 year supervised release, \$25 special assessment; Count 4: 6 month 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  
 CR 08-0160 JCS

FILED  
 APR 23 2008  
 3:39 PM  
 U.S. DISTRICT COURT  
 SAN FRANCISCO

**PROCEEDING**

Name of Complainant Agency, or Person (& Title, if any)

U.S. COAST GUARD/EPA

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

CR-08-0160 MAG

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) J. SCHMIDT/STACEY GEIS

**DEFENDANT**

**IS NOT IN CUSTODY**

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

NDCA

**IS IN CUSTODY**

- On this charge
  - On another conviction }  Federal  State
  - 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

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

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

Defendant Address:

Date/Time: \_\_\_\_\_ Before Judge: \_\_\_\_\_

Comments:

# United States District Court

FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

VENUE: San Francisco

FILED  
APR 22 PM 3:39  
U.S. DISTRICT COURT  
SAN FRANCISCO, CALIF.

UNITED STATES OF AMERICA,

v.

JOHN JOSEPH COTA,

*COTAS-0160JCS*

DEFENDANT.

**SUPERSEDING INDICTMENT**

Violations: Title 18, United States Code § 1001 (false statements) (two counts); Title 33 United States Code §§ 1319(c)(1)(A), 1321(b) (3) (Clean Water Act) (one count)(a Class A misdemeanor); Title 16 United States Code §§ 703, 707 (Migratory Bird Treaty Act) (one count) (a Class B Misdemeanor)

A true bill.

*[Signature]*  
Foreman

Filed in open court this 22<sup>nd</sup> day of

APRIL 2008

*[Signature]*  
Clerk

Bail, \$

NO PROCEEDS

*[Signature]*

FILED  
08 APR 22 PM 3:39  
RICHARD W. WILKINS  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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15 Attorneys for Plaintiff  
16 United States of America

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION  
20

21  
22 UNITED STATES OF AMERICA, )  
23 Plaintiff, )  
24 v. )  
25 JOHN JOSEPH COTA, )  
26 Defendant. )  
27 )  
28 )

No. CR 08 -00160-JCS  
VIOLATIONS:  
Title 18 U.S.C. § 1001 (false statements)  
(two counts);  
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)



1 policy of the United States that there should be no discharges of oil or hazardous  
2 substances into or upon the navigable waters of the United States or the adjoining  
3 shorelines.

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

7 7. The Clean Water Act defines a “discharge” as any spilling, leaking, pumping,  
8 pouring, emitting, emptying or dumping. 33 U.S.C. § 1321(a)(2). The Clean Water Act  
9 defines “oil” as oil of any kind or in any form, including, but not limited to, petroleum,  
10 fuel oil, sludge and oil residue. 33 U.S.C. § 1321(a)(1).

11 8. Federal regulations promulgated under the Clean Water Act define a “harmful”  
12 quantity of oil as including any discharges of oil that cause a film or sheen upon or  
13 discoloration of the surface of the water or adjoining shorelines or cause a sludge or  
14 emulsion to be deposited beneath the surface of the water or adjoining shorelines. 40  
15 C.F.R. § 110.3

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

22 The Migratory Bird Treaty Act

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

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

27 12. The Brown Pelican (*Pelecanus occidentalis*), Marbled Murrelet, (*Brachyramphus*  
28 *marmoratus*), and Western Grebe, (*Aechmophorus occidentalis*), among others, are listed

1 as migratory birds pursuant to the MBTA. 50 C.F.R. § 10.13.

2 **Count One -- 18 U.S.C. §1001**  
3 **(False Statements)**

4 13. Paragraphs 1-4 are realleged and incorporated by reference as though fully set  
5 forth herein.

6 14. On or about January 18, 2006, in the Northern District of California, the  
7 defendant,

8 **JOHN JOSEPH COTA,**

9 knowingly and willfully made a materially false, fictitious, and fraudulent statement and  
10 representation in a matter within the jurisdiction of the executive branch of the  
11 Government of the United States, specifically on United States Coast Guard Form CG-  
12 719K – Merchant Mariner Physical Examination Report – in that he certified that all the  
13 information he provided was complete and true to the best of his knowledge, when in fact  
14 he knew that the information he provided was neither complete nor true; including the  
15 information provided in Sections VI and VII of the form regarding current medications,  
16 the dosage, possible side effects and medical conditions for which the medications are  
17 taken.

18 All in violation of Title 18, United States Code, Section 1001(a)(2).

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**Count Two -- 18 U.S.C. §1001  
(False Statements)**

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3 15. Paragraphs 1-4 are realleged and incorporated by reference as though fully set  
4 forth herein.

5 16. On or about January 19, 2007, in the Northern District of California, the defendant,  
6 **JOHN JOSEPH COTA,**  
7 knowingly and willfully made a materially false, fictitious, and fraudulent statement and  
8 representation in a matter within the jurisdiction of the executive branch of the  
9 Government of the United States, specifically on United States Coast Guard Form CG-  
10 719K – Merchant Mariner Physical Examination Report – in that he certified that all the  
11 information he provided was complete and true to the best of his knowledge, when in fact  
12 he knew that the information he provided was neither complete nor true; including the  
13 information provided in Sections VI and VII of the form regarding current medications,  
14 the dosage, possible side effects and medical conditions for which the medications were  
15 taken.

16 All in violation of Title 18, United States Code, Section 1001(a)(2).

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

17. Paragraphs 1-10 are realleged and incorporated by reference as though fully set forth herein.

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

JOHN JOSEPH COTA,

did negligently discharge and 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*, negligently caused more than 50,000 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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**Count Four – 16 U.S.C. §§ 703 and 707(a)  
(Migratory Bird Treaty Act)**

19. Paragraphs 1-13 are realleged and incorporated by reference as though fully set forth herein.

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

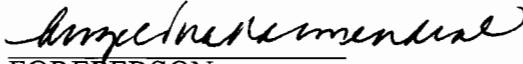
JOHN JOSEPH COTA,

without being permitted to do so by regulation as required by law, did take migratory birds, including at least one Brown Pelican, (*Pelecanus occidentalis*), Marbled Murrelet, (*Brachyramphus marmoratus*), and Western Grebe, (*Aechmophorus occidentalis*).


All in violation of Title 16, United States Code, Sections 703 and 707(a), and Title 50, Code of Federal Regulations, Sections 21.11, 20.71 and 20.72, a Class B misdemeanor.


DATED:

A TRUE BILL.

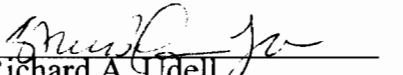
  
FOREPERSON

JOSEPH P. RUSSONIELLO  
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(Approved as to form: )  
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