

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

BY:  COMPLAINT  INFORMATION  INDICTMENT

SUPERSEDING

**OFFENSE CHARGED**

Title 18 U.S.C. § 1001 (a)(2) (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(a) (Migratory Bird Treaty Act) (one  
count) (a Class B Misdemeanor)

- Petty
- Minor
- Misdemeanor
- Felony

PENALTY:  
SEE ATTACHMENT A

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

**DEFENDANT - U.S.**

▶ JOHN JOSEPH COTA

DISTRICT COURT NUMBER  
CR 08-160 SI

**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

This report amends AO 257 previously submitted

**PROCEEDING**

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

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

Name and Office of Person Furnishing Information on this form

U.S. Attorney  Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned)

**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:

**ATTACHMENT A**

**PENALTY:**

**COUNTS ONE and TWO**

**False Statements**

5 years imprisonment, 3 years supervised release, \$250,000 fine, and a \$100 special assessment.

**COUNT THREE**

**Obstruction**

1 year imprisonment, \$1000,000 fine, 1 year supervised release and a \$25 special assessment.

**COUNT FOUR**

**Migratory Bird Treaty Act**

6 months imprisonment, \$15,000 fine, 1 year supervised release and a \$10 special assessment.

United States District Court

FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN FRANCISCO

UNITED STATES OF AMERICA,

v.

JOHN JOSEPH COTA  
and  
FLEET MANAGEMENT LIMITED,

*CRO8-DIBOSI*

DEFENDANT(S).

E-filing

FILED  
08 JUL 22 PM 4:39  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
*[Signature]*

**SECOND SUPERSEDING INDICTMENT**

Title 18 U.S.C. § 1001 (false statements)(five counts);  
Title 18 U.S.C. § 1519 (obstruction)(three 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)

A true bill.

*[Signature]*  
Foreman

Filed in open court this 22 day of

July, 2008

*[Signature]*  
Clerk  
**Brenda Tolbert**  
**MARIA-ELENA JAMES**

*[Signature]*  
Bail, \$  
no press

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16 United States of America

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

21 UNITED STATES OF AMERICA, )  
22 Plaintiff, )  
23 v. )  
24 JOHN JOSEPH COTA, )  
25 and )  
26 FLEET MANAGEMENT LIMITED )  
27 Defendants. )  
28

No. CR 08 -00160-SI

VIOLATIONS:

Title 18 U.S.C. § 1001 (false statements)  
(five counts);  
Title 18 U.S.C. § 1519 (obstruction)  
(three 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                                    **SECOND SUPERSEDING INDICTMENT**

2            The Grand Jury charges:

3                                    **INTRODUCTION**

4            At all times relevant to this Indictment:

5            1. The Defendant, JOHN JOSEPH COTA, was a resident of Petaluma, California,  
6            and a member of the San Francisco Bar Pilots Association. He held a federal first class  
7            pilot's license issued by the United States Coast Guard, and a state pilot's license issued  
8            by the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and  
9            Suisun. COTA had been employed as a Pilot in San Francisco Bay since 1981.

10           2. Defendant FLEET MANAGEMENT LIMITED ("FLEET") was a ship  
11           management company headquartered in Hong Kong. FLEET managed and operated  
12           approximately 190 vessels, including the *M/V Cosco Busan*. As the operator of *M/V*  
13           *Cosco Busan*, defendant FLEET was responsible for selecting, training and supervising  
14           the vessel's crew. Defendant FLEET acted by and through its agents and employees,  
15           acting within the scope of their agency and employment and for the benefit of defendant  
16           FLEET, including senior bridge officers and shore-based supervisory personnel.

17           3. The *M/V Cosco Busan* was a 901 foot, 65,131 gross ton freight vessel registered in  
18           Hong Kong and bearing IMO number 9231743.

19           4. On or about October 24, 2007, defendant FLEET assumed responsibility for the  
20           first time for operating the *M/V Cosco Busan* and on that same day, installed a new crew  
21           on *M/V Cosco Busan*, most whom had not previously worked for FLEET and none of its  
22           officers had previously worked on this vessel. On October 25, 2007, the *M/V Cosco*  
23           *Busan* set sail for the United States from Pusan, Korea

24           5. The *M/V Cosco Busan* had a Bridge Procedures Manual that required detailed  
25           passage planning before every voyage. The Manual stated that "the detailed plan should  
26           embrace the whole passage, from berth-to-berth, and also include waters where a Pilot  
27           will be on board" (Section 1.3.5.1) A berth-to-berth plan encompasses the entire voyage  
28           of the vessel; a pilot-to-pilot plan covers the open ocean transit where pilots are not

1 required.

2 6. On November 7, 2007, the *M/V Cosco Busan*, with JOHN JOSEPH COTA as its  
3 pilot, and with FLEET as its operator and employer of its master and crew, departed the  
4 Port of Oakland in heavy fog and struck the Delta tower of the San Francisco Bay Bridge,  
5 which resulted in the discharge of approximately 50,000 gallons of heavy fuel oil and  
6 caused environmental damage, including the loss of migratory birds.

## 7 **LEGAL FRAMEWORK**

### 8 Federal Requirements for Licensed Pilot's Annual Medical Exam

9 7. Title 46 U.S.C. § 7101 together with 46 C.F.R. §10.709 mandates that "every  
10 person holding a license or endorsement as a first class pilot shall have a thorough  
11 physical examination each year while holding a license or endorsement." 46 C.F.R. §  
12 10.709(b). Further, an individual with a first class license or endorsement "may not  
13 operate under authority of that license or endorsement until a physical examination has  
14 been satisfactorily completed." 46 C.F.R. §10.709(d). The exam must be given by a  
15 licensed physician or physician assistant who completes a Coast Guard physical  
16 examination form or the equivalent. 46 C.F.R. §§ 10.205(d), 10.709(d).

### 17 The Clean Water Act and the Oil Pollution Act

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

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

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

1 fuel oil, sludge and oil residue. 33 U.S.C. § 1321(a)(1).

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

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

13 The Migratory Bird Treaty Act

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

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

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









- 1 while making the final approach to the Bay Bridge;
- 2 I. Fleet and Cota failed to adequately use the vessel's paper charts by failing to
- 3 record and review positional fixes during the voyage;
- 4 J. Fleet and Cota failed to verify the vessel's position in relation to other established
- 5 and recognized aids to navigation throughout the voyage;
- 6 K. Fleet failed to ensure that adequate lookouts were posted during the voyage; and
- 7 L. Fleet failed to notify the Pilot when the vessel went off course while making the
- 8 final approach to the Delta-Echo span of the Bay Bridge.

9 All in violation of Title 33, United States Code, Sections 1319(c)(1)(A) and  
10 1321(b)(3), a Class A misdemeanor.

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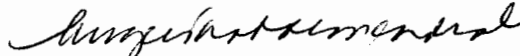
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All in violation of Title 18, United States Code, Section 1519.

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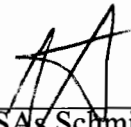
A TRUE BILL.

7/22/08

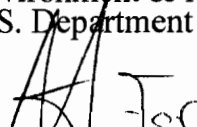
  
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