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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

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22 UNITED STATES OF AMERICA,)
23 Plaintiff,)
24 v.)
25 JOHN JOSEPH COTA,)
26 Defendant.)
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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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1 **Count Four – 16 U.S.C. §§ 703 and 707(a)**
2 **(Migratory Bird Treaty Act)**

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

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

7 JOHN JOSEPH COTA,

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


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

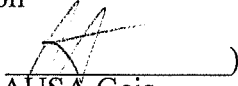
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14 DATED:

A TRUE BILL.

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17 FOREPERSON


18 JOSEPH P. RUSSONIELLO
19 United States Attorney

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21 BRIAN J. STRETCH
22 Chief, Criminal Division

23 (Approved as to form: )

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25 RONALD J. TENPAS
26 Assistant Attorney General

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28 Richard A. Udell
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