



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

MAR 22 2010

United States Sentencing Commission  
One Columbus Circle, N.E., Suite 2-500  
Washington, DC 20002-8002  
Attention: Public Affairs

Re: NOAA Comments on Proposed Amendments to Sentencing  
Guidelines, 75 Fed. Reg. 3525 (Jan. 21, 2010)

Dear Members of the Commission:

On behalf of the National Oceanic and Atmospheric Administration (NOAA), we submit the following comments on the Proposed Amendments to Sentencing Guidelines published in the Federal Register on January 21, 2010, by the United States Sentencing Commission (Commission). 75 Fed. Reg. 3525.

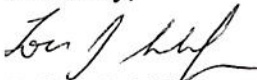
In its January 21 notice, the Commission proposes several changes to Chapter 8 of the Guidelines, including a proposed amendment to Section 8D1.4 to augment the recommended conditions of probation for organizations. The proposed section 8D1.4(b)(6) retains the existing authority of an officer or an expert engaged by the court to examine books and records at the appropriate business premises, but also adds a provision requiring the organization to submit to a reasonable number of regular or unannounced examinations of facilities that are subject to probation supervision. 75 Fed. Reg. at 3534-35.

This provision regarding examination of facilities will significantly improve NOAA's ability to obtain compliance with NOAA statutes that protect the nation's natural resources. For example, NOAA has a number of cases involving trafficking in illegally-caught fish, which can involve missing or falsified paperwork. Continued violations of probation or of NOAA statutes thus may not be apparent from an examination of a facility's books and records. Instead, examination of the facility itself, including inspection of the fish being stored there or inspection of labels on product cans, may be necessary to assure compliance with the law.

We further recommend that this provision be clarified to make explicit that the examination of a facility includes the collection of samples. This clarification could be accomplished by inserting in proposed Section 8D1.4 the following phrase -- "(including the collection of samples at such facilities)" -- after the reference to "unannounced examinations of facilities subject to probation supervision." Such sampling would allow verification of the fish species present and that may be necessary to assure that a violation of a federal natural resource statute has not occurred.

We appreciate having the opportunity to comment on these proposed revisions and commend the Commission for its support for effective enforcement of the nation's natural resource laws.

Sincerely,

  
Lois J. Schiffer  
General Counsel

