

CHAPTER 62B-54  
ADMINISTRATIVE FINES AND DAMAGE LIABILITY  
TABLE OF CONTENTS

	<b>PAGE</b>
62B-54.001 Definitions.	2
62B-54.002 Determination of Fines.	2
62B-54.003 Determination of Damages.	3
62B-54.004 Imposition and Collection of Fines and Damages.	4

**62B-54.001 Definitions.**

(1) "Department" is the Florida Department of Environmental Protection. The head of the Department is the Secretary.

(2) "Grossly negligent" violations are acts or omissions characterized by the failure to perform a manifest duty in reckless disregard of the consequences.

(3) "Harm to Resource" is an actual or potential impact, whether direct or indirect, short or long term, which is expected to occur as a result of construction and is defined as follows:

(a) "Minor Harm to Resource" is an impact associated with construction which is not an adverse impact due to its magnitude or temporary nature. Minor impacts include all administrative infractions.

(b) "Moderate Harm to Resource" is characterized by adverse impacts and other impacts as defined in Chapters 62B-33 and 62B-41, Florida Administrative Code, as appropriate.

(c) "Major Harm to Resource" is characterized by significant adverse impacts and other impacts as defined in Chapters 62B-33 and 62B-41, Florida Administrative Code, as appropriate.

(4) "Knowing" violation is an act or omission done with awareness of the nature of the conduct.

(5) "Willful violation" is an act or omission which is voluntary, intentional and with the specific intent to do something the law forbids, or fail to do something the law requires to be done.

Specific Authority 161.052, 161.053, 161.054, FS.

Law Implemented 161.052, 161.053, 161.054, FS.

History - New 3-20-00.

**62B-54.002 Determination of Fines.**

(1) The Department shall assess fines for willful violations of, or refusing to comply with, sections 161.041, 161.052, and 161.053, Florida Statutes, or any rule or order prescribed by the Department thereunder. The fine amount shall be sufficient to ensure immediate and continued compliance with the provisions of section 161.041, 161.052, and 161.053, Florida Statutes, and be consistent with the following table:

HARM TO RESOURCE or POTENTIAL FOR HARM	FINE RANGE
Major	\$5,000 - \$10,000
Moderate	\$1,000 - \$5,000
Minor	0 - \$1,000

(2) Each day during any portion of which a violation occurs or continues to occur hereunder constitutes a separate offense. Multi-day fines will compound

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beginning on the date of receipt of the Department's warning notice. Multi-day fines will not be assessed for minor impacts.

(3) In determining the actual fine within the range, the Department shall consider the offender's past violations, if any, and other aggravating or mitigating circumstances. Aggravating circumstances include but are not limited to prior knowledge of rules, or willful or knowing violation of department orders; while mitigating circumstance include but are not limited to events during an emergency situation in which activities are preformed to alleviate imminent collapse or undermining of a structure without obtaining a permit, or obtaining a local permit for activities and not a department permit.

Specific Authority 161.052, 161.053, 161.054, FS.

Law Implemented 161.052, 161.053, 161.054, FS.

History - New 3-20-00.

### **62B-54.003 Determination of Damages.**

(1) The Department shall assess damages for grossly negligent or knowing violations of sections 161.041, 161.052, or 161.053, Florida Statutes, or any rule or order prescribed by the Department thereunder, which result in harm to sovereignty lands seaward of mean high water or to beaches, shores, or coastal or beach-dune system(s), including animal, plant, or aquatic life thereon. In accordance with section 161.054(4), F.S., the damage amount shall be sufficient to ensure immediate and continued compliance with the provisions of sections 161.041, 161.052, and 161.053, Florida Statutes, and be consistent with the following table:

HARM TO RESOURCE	CULPABILITY	
	Gross Negligence	Knowing
Major	\$1,000 minimum	\$5,000 minimum
Moderate	\$500 minimum	\$1,000 minimum
Minor	\$250 minimum	\$250 minimum

(2) Damages in amounts greater than the minimum amounts provided above may be assessed. When determining the amount of damages sufficient to ensure the immediate and continued compliance with the provisions of section 161.041, 161.052, and 161.053, Florida Statutes, the Department shall consider:

- (a) the lost or diminished ability to protect upland structures and property from wind and water damage resulting from storms,
- (b) the lost or diminished opportunities for recreational use,
- (c) the need for restoration, and
- (d) the damaged ecological resource.

(3) The Department does not hereby waive any right to assess fines pursuant to Administrative Fines for Damaging State Lands or Products Thereof , Chapter 18-14,

Florida Administrative Code.

Specific Authority 161.052, 161.053, 161.054, FS.

Law Implemented 161.052, 161.053, 161.054, FS.

History - New 3-20-00.

**62B-54.004 Imposition and Collection of Fines and Damages.**

(1) The provisions of sections 62B-54.002 and 62B-54.003, Florida Administrative Code, are not mutually exclusive and may be utilized concurrently.

(2) Fines and damages shall be imposed and collected by the Department pursuant to sections 161.052, 161.053, 161.054, Florida Statutes, and the Florida Administrative Procedures Act, Chapter 120, Florida Statutes. Nothing in this rule chapter shall be construed to preclude the Department from bringing suits or taking action as is otherwise lawfully authorized including directing appropriate restoration activities against any person or the agent of any person who has been found to have violated the provisions of Chapter 161, Florida Statutes.

(3) Upon discovery of a violation, the Secretary of the Department or his/her designee shall issue a notice to suspected and known violators giving notice of the violation. Such notice shall be served on the violator by certified mail, return receipt requested; actual delivery; or by personal service; and shall identify the provision of law or rule alleged to have been violated. The notice shall include a brief statement of the facts constituting the alleged violation.

(4) Upon determination that the violation is considered a minor violation pursuant to section 120.695(2)(b), Florida Statutes, the Department shall issue a notice of noncompliance as a first response to that minor violation.

(5) Upon determination that a fine or assessment of damage is warranted, the Secretary of the Department or his/her designee shall issue a final order to the violator demanding payment to the Ecosystem Management and Restoration Trust Fund within 21 days of receipt. If payment is not received by the Department within such 21 day period the fine shall become a lien upon the real and personal property of the violator, enforceable by the Department as a statutory lien pursuant to section 161.054, Florida Statutes.

Specific Authority 161.052, 161.053, 161.054, FS.

Law Implemented 161.052, 161.053, 161.054, FS.

History - New 3-20-00.