

## Chapter NR 323

### BIRD NESTING AND SIMILAR HABITAT STRUCTURES IN NAVIGABLE WATERS

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**NR 323.01 Purpose.** This chapter is promulgated under s. 30.12 (3) (d), Stats., to establish standards for the placement of bird nesting and similar habitat structures on the beds of navigable waters for the purpose of improving wildlife habitat.

**Note:** 2003 Wis. Act 118 repealed s. 30.12 (3) (d), Stats.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**NR 323.02 Applicability.** This chapter applies to riparian owners that construct, place and maintain bird nesting and similar habitat structures in navigable waters for the purpose of improving wildlife habitat without application for a permit under s. 30.12 (2) or (3), Stats., as authorized under s. 30.12 (3) (bn), Stats.

**Note:** 2003 Wis. Act 118 repealed s. 30.12 (2) and (3) (bn), Stats., and renumbered a portion of s. 30.12 (3) to be 30.12 (1g), Stats.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**NR 323.03 Definitions.** In this chapter:

(1) "Department" means the department of natural resources.

(2) "Nesting structure" means any structure or device constructed for the purpose of improving nesting habitat for wildlife, including birds, mammals, amphibians and reptiles. Nesting structures include but are not limited to wood duck houses and nesting platforms.

(3) "Riparian owner" means an owner of land adjacent to navigable waters.

(4) "Riparian zone of interest" means that area within a waterbody where a riparian owner has special rights under Wisconsin water law. The riparian zone of interest is determined using the criteria in s. NR 326.07.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**NR 323.04 Minimum standards and location criteria.** (1) A riparian owner may place and maintain a nesting structure on the bed of navigable waters without first obtaining a permit under s. 30.12 (3), Stats., if the nesting structure complies with the standards in this section and if the riparian owner submits the notification required under s. NR 323.05.

(2) Nesting structures shall be designed and constructed to prevent structural failure caused by wave, wind or ice action and shall be maintained in good condition at all times.

(3) The surface area of a nesting structure may not exceed 25 square feet.

(4) Nesting structures shall be placed within the owner's riparian zone of interest.

(5) Nesting structures shall be designed and constructed of unpainted wood or of materials that are non-gloss earhtone col-

ors, that blend into a natural shoreline setting during leaf-on conditions.

(6) Nesting structures may not result in a material obstruction or hazard to navigation.

(7) Nesting structures may not be treated with wood preservatives or compounds that may be harmful to wildlife using the structure or a potential pollutant to the waterway.

(8) Nesting structures authorized under the authority of this chapter and s. 30.12 (3) (bn), Stats., are the responsibility of the riparian owner and the riparian owner shall assume all liability associated with the structures.

**Note:** 2003 Wis. Act 118 repealed s. 30.12 (3) (bn), Stats.

**Note:** Wood duck houses and nesting platforms attached to or supported by existing trees in their natural condition are not a regulated activity under ch. 30, Stats.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; **correction in (1) made under s. 13.93 (2m) (b) 7., Stats.**

**NR 323.05 Notification requirements to the department.** (1) A riparian owner proposing to construct a nesting structure in navigable waters for the purpose of improving wildlife habitat under s. 30.12 (3) (bn), Stats., shall notify the department in writing at least 10 working days before the structure is placed in navigable waters.

**Note:** 2003 Wis. Act 118 repealed s. 30.12 (3) (bn), Stats.

(2) Written notification to the department shall include all of the following:

(a) Name, address and telephone number of riparian owners.

(b) Location of the riparian owner's property identified by county, township, range, section and quarter, quarter section.

(c) The name of the water body involved.

(d) Number and type of nesting structures to be installed.

(e) A written statement from the project proponent certifying that he or she understands the requirements of this chapter and the nesting structures will be built in accordance with them.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**NR 323.06 Enforcement.** Nesting structures constructed in navigable waters in violation of this chapter and s. 30.12 (1g) (d), Stats., are considered a public nuisance under s. 30.294, Stats., and are subject to penalty provisions under s. 30.298, Stats.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; **corrections made under s. 13.93 (2m) (b) 7., Stats.**