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POLICY BRIEF

Key Findings for multi-use pilots in terms of legal, governance, and insurance.



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POLICY BRIEF FRAME

The concept of multi-use (MU) presents a radical change from the concept of exclusive resource rights to an inclusive sharing of resources by multiple users. Maritime policy and regulation have traditionally developed on a sector-by-sector basis. However, ocean MU is cross-sectoral by nature. Therefore, the existing regulatory framework may pose some challenges to the deployment of ocean MU projects.

Nevertheless, the European Union (EU)'s overarching Integrated Maritime Policy seeks to provide for increased coordination between different policy areas since 2007. The Maritime Spatial Planning Directive requires all EU member states to develop maritime spatial plans (MSPs) and strategically consider the best location for maritime uses.

One sector that clearly increased the need for spatial management is renewable energy production, especially offshore wind farms. Energy transition ambitions have increased the use of European seas for energy production dramatically. These long-lasting fixed installations have caused tensions and even conflicts with other -often traditional and mobile- use, such as shipping and fisheries. As the wind sector became more and more established, new uses such as sustainable food production have been claiming space, also inside wind farm zones. The need for MU of space at sea is apparent in most European seas, which is often reflected in the objectives of the national MSPs.

However, according to previous European projects, multiple barriers related to regulatory, policy, and insurance issues are still stalling the transfer of MU from concept to implementation.

OUR ANALYSIS

UNITED has analyzed the legal, policy, and insurance context of five different pilot projects:

- Germany: combination of blue mussels and seaweed cultivation with offshore wind energy
- Belgium: flat oyster aquaculture, restoration, and seaweed cultivation with offshore wind energy
- The Netherlands: offshore seaweed cultivation combined with floating solar energy
- Denmark: tourism with offshore wind energy
- Greece: fish-aquaculture with tourism

The findings for the pilots detect the loopholes in the legal framework(s) and the different approaches in MU governance. Likewise, it provides different pathways to curb the cost of insurance to encourage the practice of MU.



Based on the experience and challenges of the five pilots and discussions with stakeholders in each pilot the legal, governance, and insurance challenges have been set out.

To use all case studies for this analysis, questionnaires were prepared and discussed. Preliminary, this has resulted in an inventory of the common and pilot-specific challenges and risks.

Subsequently, the specific pilot contexts have been further researched based on literature studies, pilot-specific interviews, and workshops. In particular, the project has analyzed:

- the legal and policy context of MU governance in the pilot countries as defined in their national MSPs.
- The national law and pilot practice on permits, concessions, access, and environmental impact assessment (EIA) requirements for MU within the pilots, including the extent to which cumulative permitting and EIA are foreseen.
- The differences and common practices in the governance of MU in the pilots.
- The analysis of the pilots' insurance policies with a focus on the additional risk posed by MU.

This has resulted in a governance and insurance table in which the different approaches of the pilots' contexts are summed up. Furthermore, recommendations have been produced for several legal bottlenecks and insurance issues.

If policymakers have a genuine ambition to come to a real integration of marine activities, a coherent legal framework is urgently needed.



At present, the realization of MU at sea requires compliance with a diverging set of rules and procedures that various institutions have put in place. This includes different public authorities, who for example have control over permits, and the private sector with its standards that also determine what is possible or not within their concession zone. The established sector of wind energy production can potentially play an important role in developing MU, through the integration of other activities in the wind zones.

Our study has demonstrated the existence of different governance models:

- the **model of control**, strict planning, and regulation which allows MU only within pre-defined zones (the Belgian and German pilot),
- the **model of flexibility** and adaptive management in which the exact location and modalities of MU are to be defined within larger zones according to a bottom-up process and depending on innovation (the Greek and Dutch pilot), and
- the “**hybrid**” **model** which culminates the characteristics of the first two models into one at different governance levels (the Danish pilot).

This implies a flexible multi-use governance approach between a fixed installation and a selected mobile activity, which lies in between the strictly planned top-down governance model and the flexible bottom-up governance model.

It should be noted that the scientific or commercial nature of the envisaged activities may also impact the authorization process.

The **governance model of control** may offer MU developers more clarity upfront on what is possible where, and what is not. Under the model of flexibility, all topics are open to discussion which means developers may be confronted with higher costs, such as the time and resources needed to invest in the procedure or the studies needed to justify choices. However, the latter can be dealt with as shown by the Dutch pilot. The Dutch approach with “gebiedspaspoorten” can be seen as a way to reduce the cost for MU developers: government-funded studies predefine which uses are most suitable for what location and reduce costs for surveys to be carried out by private sector developers.

Notwithstanding all the differences, safeguarding shipping routes is essential to all pilots and the safety of shipping has priority over all other uses. Another common ground has been found in a rather flexible approach to tourism, as this can contribute to public awareness and acceptance of certain offshore activities.

The **development of MU** can be facilitated by merging or aligning the permit and EIA procedures applicable to the different uses and bolstering cooperation between all competent authorities. Replacing this fragmented approach into one or a combined MU permit application and the appointment of a one-stop shop authority is therefore recommended.



RECOMMENDATIONS

STREAMLINING ADMINISTRATIVE PROCESSES: UNLOCKING RENTABILITY POTENTIAL FOR MULTI-USE PROJECTS

Lowering the administrative burden might positively impact the rentability of MU projects.

At present (rather low) rentability plays a role in the slow emergence of MU in European seas. This could be addressed by designating specific zones for MU experimentation where less stringent legal requirements apply. Furthermore, the cost of insurance policies should be taken into account.

UNITED has demonstrated that it is not always necessary to take out a novel insurance policy for MU or to alter an existing one in case the insurance policy of the existing activities provides sufficient coverage. This preliminary consideration is crucial to avoid overlapping insurance which presents a superfluous cost and may raise the question of which policy needs to cover damages and which recourse is possible. Even if the existing insurance coverage is sufficient, it is recommended that the different MU users conclude a contractual waiver of recourse (for claiming damages) between them as the MU user remains liable for any damages caused (insofar as this is allowed by the insurance policy). When however additional insurance is required, several specific circumstances and characteristics of MU projects and insurance policies might have a substantial impact on the insurance premiums.

To deal with the novelty of MU and its impact on premiums, it will be essential to detail the intended MU project to the insurer as much as possible in terms of risk, risk consequences, mitigation measures, and probability. Furthermore, a firm track record of the MU developers and well-trained staff and equipment in line with all security requirements are helpful.

Besides the above-mentioned individual parameters (caps, deductibles,...) which MU actors can negotiate with their insurers, governments can also offer solutions for more affordable insurance policies. Governments can set up government-backed funds (for example drawing from the European Maritime, Fisheries and Aquaculture Fund) to compensate for damages emanating from certain force majeure events such as natural disasters.

They can also impact the project design by awarding joint MU concessions which encourages applicants to take account of the risks of each activity in their initial planning and project design.

ADVANCING OFFSHORE MULTI-USE: ADDRESSING GOVERNANCE, LEGAL, AND INSURANCE CHALLENGES

In the next phase, attention should be paid to the monitoring of new governance, legal, and insurance developments regarding offshore MU and co-use of space, with a focus on the UNITED pilots and others.

If the EU has the ambition to be at the forefront of MU development at a global scale, the pace of policy action should be accelerated. UNITED maps the current shortcomings and challenges in terms of a legal framework, governance, and insurance. It shows the way forward for policymakers, the involved sectors, and MU developers to overcome the existing issues and excessive administrative burden.

In essence, this means the creation of a clear legal framework for MU which simplifies the application procedures for MU concessions, permits, and EIAs, by preference coordinated or dealt with by one (stop shop) authority. Whichever governance structure is in place for MSP, policymakers should and can provide sufficient legal certainty and clarity on the specifics of MU in their MSPs to lower risk and costs for MU developers.

This does not necessarily mean that only strict top-down governance models are capable of doing so.

Even flexible governance models can deliver with (for example) the adoption of MU guidelines. Finally, UNITED has provided several solutions to governments and MU developers to overcome the insurability of certain MU risks and to lower insurance costs.





UNITED



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follow-up project:
ULTFARMS



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