

Who owns the wind?

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Challenge

The North Sea countries have set a goal of building offshore wind farms with a total capacity of 260 GW by 2050. Several states are planning to build offshore wind farms in the North Sea (Fig. 1), and the facilities are often located at the border of other states, where the economic zones meet. A practical problem may arise when the facilities affect and disturb wind conditions, known as wake effects (Fig. 2). In areas with wake effects, it becomes more difficult to plan and maintain energy production. This forms the basis for a legal question about who owns the right to exploit the wind.

Approach

The scientific method for discussing legal issues is based on an analysis of legal sources that are relevant to the question, such as international agreements signed by Norway, legal texts, and court decisions. The method also looks at how to solve questions that are not directly regulated, including by placing the relevant question in a larger context, making comparisons with, for example, the regulation of water and wind or the law of other countries. Legal science is also about identifying areas where regulation is needed.

Findings

Article 56 of the United Nations Convention on the Law of the Sea (UNCLOS) states that states have the right to exploit wind resources within their economic zone. At the same

time, the convention requires that states take “due account” of the rights and obligations of other states. It is unclear whether the requirement to take account entails a duty to consult other states during the planning of offshore wind development. However, it is clear that any objections from the other state do not determine the outcome of the case.

Consequence

The answer to the question raised here is that we do not have a clear regulation of states’ duty to take into account how the development of offshore wind on their side of the economic zone can affect offshore wind farms on the other side. Lack of/unclear regulation creates an uncertain and unpredictable situation for the states. If we get clearer regulations for coordination, it could lead to better utilization of wind resources in the North Sea. We need international cooperation to clarify legal frameworks and follow-up nationally.

Next Steps

We need political attention to the topic and willingness to discuss and act both nationally and internationally. There is also a need for more legal research in this area to provide good professional input to lawmakers on how the gap in regulation can and should be filled. Offshore wind is a new industry that will be of great importance in the future, but the legal regulation is generally immature and unexplored. This makes the need for legal research particularly great in this area.

Publication/dissemination:

- Finserås, Anchustegui, Cheynet, Gebhardt and Reuder, *Gone with the wind? Wind farm-induced wakes and regulatory gaps*, *Marine Policy*, Volume 159, 2024

- Anchustegui, *Distributive Justice, Community Benefits and Renewable Energy: Offshore Wind Projects*, In *Sustainable Energy Democracy and the Law*, pp. 214-239. Brill Nijhoff, 2021

Fig. 1: Offshore wind farms planned in Northern Europe

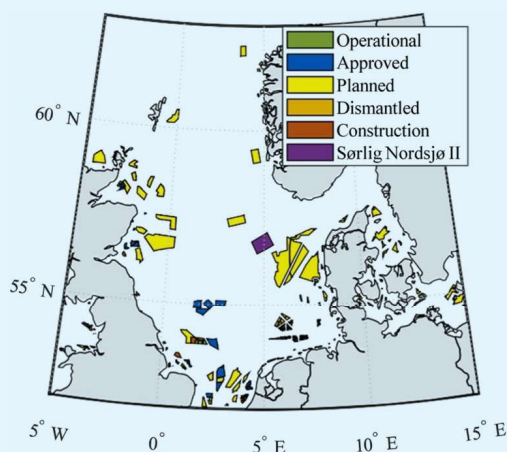


Fig. 2: Mean wind speed observations in the German Bight

