

Overlap between the Maritime Domain Boundary and Port Area Boundary: Dualism of the Legal Regime Governing Nautical Tourism Ports and Property Law Challenges

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This paper analyzes the relationship between the maritime domain boundary and the port area boundary in the context of nautical tourism ports, examining the legal and property law implications of their potential overlap. The hypothesis is that the current dual boundary determination system is not fully adapted to the specific characteristics of nautical tourism ports. The study focuses on the relationship between the maritime domain boundary and the port area boundary, with particular emphasis on the property law consequences of their overlap. The maritime domain is a public good outside private legal circulation, managed by the state, while the port area is a functionally defined space intended for port activities. In practice, the port area boundary is generally located within the maritime domain, but the procedures for determining these boundaries arise from different legal frameworks and are implemented through distinct administrative and normative mechanisms. This normative dualism can create legal ambiguities, especially in nautical tourism ports (marinas), where the maritime domain and port area almost always coincide both spatially and functionally. Problems arise when the maritime domain boundary has not been clearly established before determining the port area and granting a concession for the economic use of the maritime domain, or when the maritime domain boundary has been established but the port area boundary remains unclear. These situations can result in inconsistencies between the concession scope, the land registry status of the properties, and spatial planning documents. The consequences include legal uncertainty for investors, disputes over the extent of concessions, and challenges in managing and developing port infrastructure. The paper uses a range of scientific methods, including inductive and deductive reasoning, analysis and synthesis, abstraction and concretization, generalization and specialization, proof and refutation, classification, description, historical analysis, compilation, and comparative methodology. The application of these methods confirmed the hypothesis and led to the conclusion that the possibility of unified determination of the maritime domain boundary and the port area boundary needs to be considered during the establishment or concession granting process of a port.

KEY WORDS

- ~ Nautical tourism ports
- ~ Port area boundaries
- ~ Maritime domain boundaries
- ~ Concession
- ~ Legal certainty

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1. INTRODUCTION

In the Croatian legal system, the maritime domain is a public good excluded from private legal circulation, while the port area is a functionally defined space intended for port activities (Jug, 2025). Although these two boundaries often coincide spatially in practice, their determination arises from different legal institutes and is conducted through separate administrative and normative procedures regulated by the Maritime Domain and Ports Act of 2023 (ZPDML/2023). This normative dualism can create legal uncertainty and inconsistencies between spatial planning documents, concession decisions, and land registry entries, especially for nautical tourism ports (marinas), where the area designated for economic use is almost entirely within the maritime domain (Ljubetić, 2021).

This paper seeks to clarify the legal regime governing nautical tourism ports and to provide arguments for potential normative or administrative improvements in the system for determining the boundaries of the maritime domain and port areas. The aim is to enhance legal certainty, enable more efficient management of coastal areas, and promote the sustainable development of nautical tourism in the Republic of Croatia (Hlača-Nakić, 2010).

Pursuant to Article 141 of the ZPDML/2023, a nautical tourism port, as a special-purpose port, is intended for the reception, mooring, and maintenance of vessels and is equipped to provide services to both users and vessels. In terms of business, construction, and functionality, it constitutes a unified entity, while the port area boundary of a special-purpose port includes the land strip along the coast and the part of the sea designated as a special-purpose port in spatial planning documents (Art. 24 ZPDML/2023). On land, the port area boundary of a special-purpose port encompasses the space necessary for performing activities in accordance with the port's purpose and its associated facilities, which generally covers the maritime domain entirely. At sea, the port area boundary covers the marine space that allows for the safe maneuvering of vessels for which the port is intended, which always includes the maritime domain since the outer sea component of the maritime domain boundary coincides with the boundary of territorial waters.

In this context, a legitimate question arises as to why the legislator chose what is, in our view, an entirely unnecessary dualism between the maritime domain boundary and the port area boundary. Determining both boundaries is a prerequisite for granting concessions at nautical tourism ports and has become a significant impediment to the development of nautical tourism in the Republic of Croatia. By its nature and purpose, the maritime domain – and its boundary – is always broader than the port area boundary at sea, while on land it generally coincides with the maritime domain boundary. In rare cases, it may extend beyond the port area boundary, but it can never be narrower. In many places along the Croatian coast, the maritime domain boundary and the port area boundary coincide; however, under the current legal definition – which includes the entire marine port within the legal regime of the maritime domain – the maritime domain boundary can never be narrower than the port area boundary (Kundih, 2025).

Currently, two distinct boundaries exist in Croatian law: one encompassing internal sea waters and the territorial sea, which are defined as the maritime domain under the ZPDML/2023, and the other – the port area boundary – covering the limits of a given port and being narrower than the outer boundary of the territorial sea.

2. NAUTICAL TOURISM PORTS IN THE REPUBLIC OF CROATIA

Nautical tourism ports in the Republic of Croatia represent the country's most stable tourism model, serving as an example for other Croatian tourism sectors, and have experienced continuous growth since their inception. It is therefore surprising that legislative measures have created obstacles to their further development (Dogan-Mršić, 2013). Croatia's unique coastline, with its numerous islands, forms a complex system that requires the creation of a regulatory framework for future tourism development.

Over the past thirty years, Croatian nautical tourism ports have recorded some of the highest growth rates not only in the national economy but also globally. Nautical tourism is continuously evolving, with core functions including maritime navigation, recreation, leisure, relaxation, and cruising. A nautical tourism port is a business-functional entity in which a legal or natural person operates and provides services in nautical tourism, along with additional services catering to tourist consumption (Vuković-Mišić, 2019).

According to data from the Croatian Bureau of Statistics for 2018, in 2017 there were 140 nautical tourism ports in Croatia, comprising 70 marinas (13 of which are dry marinas) and 70 other nautical tourism ports (which do not include vessel storage facilities), with a total of 17,067 berths. Among the other nautical tourism ports are anchorages (61), piers (6), and unclassified nautical tourism ports, while vessel storage facilities, as a category of nautical tourism port, are not separately listed (Croatian Bureau of Statistics, Press Release, 2018).

According to the Regulation on the Categorization of Nautical Tourism Ports and the Classification of Other Facilities for Providing Mooring and Accommodation Services for Vessels (Official Gazette NN 120/19), a nautical tourism port and other facilities providing mooring and accommodation services are considered business-functional entities in which a legal or natural person operates and provides tourist services in nautical tourism, as well as other services for tourists (commercial, catering, etc.) during the period from May 1 to October 31 of the current year.

A nautical tourism port is classified as a marina, while other facilities for mooring and accommodation services are classified as nautical anchorages, nautical piers, vessel storage facilities, and dry marinas. A marina is a specially constructed and organized sea or water area and shoreline designed to provide mooring services, accommodation for tourists in vessels, and other services for tourists, including the provision of food and beverages.

In this context, ports and other facilities must be organized and equipped to ensure the safe and uninterrupted movement of tourists and staff, the smooth transport and handling of goods, and the proper storage of merchandise, food, and beverages. This means that supporting facilities, which are not included in the concession or maritime domain, must exist alongside the port. These supporting facilities are typically privately owned by individuals or legal entities, which often leads to complex property law situations (High Commercial Court Judgment OSS-SSS, P-2795/2024, November 28, 2025).

3. PORT AREA BOUNDARIES IN RELATION TO MARITIME DOMAIN BOUNDARIES

3.1. The Importance of Determining Maritime Domain Boundaries in Property Law Relations

The legal nature of the maritime domain is one of the most contentious issues in property law within the Croatian legal system. Although the maritime domain is theoretically classified as a public good outside private legal circulation, in practice, frequent cases indicate deviations from this principle. Questions regarding the boundaries of the maritime domain, land registry entries, and conflicts with private ownership rights often create complex legal situations and varying judicial interpretations.

According to Article 2 of ZPDML/2023, the maritime domain includes the sea, the seabed, the subsoil, and parts of the land that, by their nature or purpose, are intended for the use of the sea. Thus, the scope of the maritime domain is both natural and functional – certain parts of the land may become part of the maritime domain if they serve the use of the sea (e.g., beaches, piers, coastal paths). This creates a dynamic concept of the maritime domain, which is not static but depends on actual spatial conditions and the manner of use.

The boundaries of the maritime domain are established through a special administrative procedure conducted by the competent state authority, following prior opinions from expert bodies. The boundary is delineated in a geodetic report and entered into the cadaster and land registry (Article 20, ZPDML/2023). However, due to lengthy procedures and insufficient coordination among the competent authorities, numerous discrepancies and inconsistent entries have occurred in practice, resulting in significant problems for nautical tourism ports. In some cases, the maritime domain overlaps with plots recorded as private property in the land registry. This issue is particularly pronounced in coastal towns, where historical cadastral plans are outdated (Kundih, 2025).

The ZPDML/2023 seeks to partially address this issue by establishing a unified registry and a clearer procedure for determining boundaries. Despite these measures, practice shows that a significant number of disputes persist between the Republic of Croatia and private individuals regarding ownership entries for areas that are, by their nature, part of the maritime domain. Today, maritime domain boundaries must be considered not only spatially but also legally, including aspects of environmental protection and sustainable development. The maritime domain is not just a physical space but a legal institution that encompasses multiple functions: ecological, economic, social, and cultural (Kundih, 2025). Therefore, the establishment of an integrated management model is proposed, in which maritime domain boundaries would be based on the principle of functionality rather than solely on physical terrain features.

In comparison, in Italy, maritime domain boundaries are established by a special decree from the Ministry of Transport, while in France, the maritime domain includes all areas flooded by the sea during the highest tides (Jug, 2025). Both systems emphasize that the coastal zone is dynamic and subject to natural processes, meaning that boundaries are not permanent but are subject to periodic revision.

One contentious issue is whether a decision establishing the maritime domain boundary has a declaratory or constitutive effect, which is particularly important for the current and future legal status of specific real rights over the maritime domain. Notably, the new ZPDML/2023, in Article 10, stipulates that a court or administrative decision determining a property's status as part of the maritime domain has a declaratory effect. Conversely, in cases of boundary expansion, the

decision is deemed to have a constitutive effect. However, the law does not clarify what constitutes a “boundary expansion,” a question that has proven highly contentious in judicial practice.

Specifically, in cases where a decision is made to determine the maritime domain boundary — which, unfortunately, remains rare — the boundary may extend inland more than six meters from the shoreline (the mean high-water line), and in some cases even over 30 meters into private land plots, (see Administrative Court of the Republic of Croatia ruling, Usl-324/2022 of October 28, 2022.) Courts often hold that such cases do not constitute a maritime domain boundary expansion, which has led to prolonged and complex litigation.

The maritime domain boundary that encloses a portion of state territory inland generally cannot be reliably determined solely by the nature or purpose of sea use. Such a boundary would essentially result from the discretionary assessment of the competent authorities, as the part of the land serving the use of the sea by its nature and purpose can be interpreted in highly variable ways. This is especially true regarding the broad interpretation of the purpose of sea use by expert commissions (Article 21, Paragraph 2, ZPDML/2023). The outer boundary of the territorial sea constitutes the state border of the Republic of Croatia, which also serves as the maritime domain boundary.

In practice, the determination of maritime domain boundaries in the Republic of Croatia has shown inconsistent procedures and boundary determinations, even in identical real situations along the coastline. Such practices are clearly unacceptable and must be reformed; however, before this, the legislative framework itself needs to be amended, since the determination of the maritime domain boundary is a *conditio sine qua non* for establishing the legal status of properties located near the sea.

3.2. Determining Maritime Domain and Port Area Boundaries under ZPDML/2023

Chapter II of ZPDML/2023, titled “Determining the Status of the Maritime Domain,” Article 18 establishes the purpose and objective of determining the status of the maritime domain. This process involves identifying which parts of the land constitute the maritime domain in accordance with Article 6 of the Act, to register the maritime domain status in the land registry and cadaster. Determining the maritime domain boundaries on land is crucial for marking the line that separates the land forming part of the maritime domain from land under the private property regime.

The textual component of the proposed maritime domain boundary and the port area boundary of a special-purpose port must include the same elements. These include: a description of the boundary and identification of all properties constituting the maritime domain; information on any previously determined boundaries based on earlier legislation; data on land reclamation or erosion; information on the configuration and current state of the area; justification for the verification of cadastral and land registry data concerning properties (land and buildings) and their original status; a list of coordinates for all turning points of the proposed boundary in the current national coordinate system; the reasons for the proposed boundary; and a report on the public consultation process.

The public consultation report is the most significant change in the new ZPDML/2023. Article 23 stipulates that the County Commission for Boundaries is required to make the proposed boundaries of the maritime domain and the port area of a special-purpose port available for public inspection on the notice boards and websites of the relevant regional and local self-government units for which the maritime domain and port area boundaries are proposed — something that was not previously required.

This public inspection period lasts 30 days, during which all participants in the public consultation have the right to access the proposed maritime domain and port area boundaries and to submit written suggestions and objections to the competent administrative authority. This is considered a highly positive step toward a more transparent process for determining maritime domain boundaries, which remains the most crucial procedure in establishing the legal status of the maritime domain.

The new ZPDML/2023 establishes a timeframe for the County Commission for Maritime Domain Boundaries, which is required, upon request from a state administrative body, to prepare a proposal for the maritime domain boundary or the port area boundary of a special-purpose port within 30 days from the submission of a complete request, and to submit the proposal to the Ministry following the completion of the public consultation.

Furthermore, ZPDML/2023 (Article 20, ZPDML/2023) introduces parties to the procedure for determining maritime domain and port area boundaries. These include all owners registered in the land registry and cadaster, as well as the competent state prosecutor’s office. When proposing the maritime domain boundary, the County Commission must ensure that the proposal fully encompasses land that, by its nature, is directly connected to the sea, as well as land that, due to its

natural characteristics and original status, constitutes maritime domain. The commission must also consider the natural features of the area.

If, due to the natural configuration of the land for which the maritime domain boundary is proposed, the previous provision is not applicable, the boundary may be proposed to follow the cadastral boundary of the first coastal cadastral plot adjacent to the maritime domain. In doing so, historical cadastral and land registry data must be taken into account, including information on land plots from which the property was subdivided, to establish the original status of the property since the establishment of the cadaster (Article 21, Paragraph 4, ZPDML/2023). This ensures that the maritime domain status of a property that has always been part of the maritime domain is not annulled by the drawing of the new boundary.

In exceptional cases, the maritime domain boundary may be proposed to include a coastal strip narrower than the minimum width prescribed by this Act. When preparing such a proposal, the County Commission for Maritime Domain Boundaries must take into account historical, cadastral, and land registry data on the properties, including information on cadastral plots from which they were subdivided, to establish the original status of the properties (Article 22, Paragraph 3, ZPDML/2023). In these cases, the seaward edge of a road with its associated land and areas defined as such under the special legislation regulating roads, as well as the seaward edge of a building or its integral part — provided that, by its characteristics, time, construction method, and purpose, it represents a historical, cultural, or religious building visible in the 1968 state aerial survey — may also be taken into consideration, (Article 22, Paragraph 1, ZPDML/2023).

Pursuant to Article 25 of the ZPDML/2023, a decision on the determination of the maritime domain boundary or the port area of a special-purpose port must include the following elements in its operative part:

1. The name of the cadastral municipality for which the procedure is conducted,
2. The micro location for which the procedure is conducted,
3. The cadastral plot number, according to cadaster and land registry data, included within the proposed maritime domain or port area boundary,
4. A list of points and their coordinate values defining the maritime domain or port area boundary,
5. The obligation to prepare a geodetic elaboration for the implementation of the decision on the determination of the maritime domain or port area boundary,
6. A statement that the property loses its maritime domain status if a part of it must, as an exception under the criteria of this Act, be excluded from the maritime domain, and
7. An instruction to the land registry court to register ownership rights in favor of the Republic of Croatia for the property that loses its maritime domain status (Ministry Decision, September 19, 2025).

As previously noted, one of the most important issues in the maritime domain and port areas is their identification, specifically, determining the boundaries of the maritime domain and port areas. This is crucial for establishing the legal status of the maritime domain, as well as because the maritime domain, as a *res extra commercium*, is available for use by any person without prior authorization. Everyone has the right, under equal conditions, to use the maritime domain in accordance with its characteristics, nature, and purpose, except where the ZPDML/2023 provides otherwise.

The determination of the land portion of the maritime domain has long been contentious in practice because designating a land plot — or part of a plot — as maritime domain directly affects its specific property-law status. In such cases, the land is excluded from the regular property regime and becomes *res extra commercium*, meaning that neither ownership nor other real rights can be legally acquired over it. Unfortunately, this issue remains unresolved, as the ZPDML/2023 does not clearly define what constitutes valid acquisition of ownership rights over maritime domain property.

Whether a particular portion of land is “by its nature in direct connection with the sea,” and whether it serves, by its “purpose and manner of use, the ordinary use and exploitation of the sea as a public good,” remains subject to the discretionary assessment of the decision-making authority. This is another provision that, in our view, should have been clarified but was not. Furthermore, the prescribed procedure for determining the status of a property as part of the maritime domain — particularly the material prerequisites a property must meet — directly contradicts another provision of the same Act, which stipulates that a court or administrative decision establishing a property’s status as maritime domain has a declaratory effect (Article 10, Paragraph 2, ZPDML/2023).

Specifically, the declaratory effect applies to court decisions and administrative acts that merely confirm the existence of a particular legal status or relationship. However, the ZPDML/2023 stipulates that the land portion of the maritime domain extends at least six meters from the line of mean higher-high water measured horizontally (Article 6, Paragraph 3, ZPDML/2023). It is not clearly defined whether land located more than six meters inland automatically falls within the maritime domain; this must be determined on a case-by-case basis, depending on whether such land is naturally in direct connection with the sea and serves, according to its purpose and manner of use, the ordinary use of the sea as a public good.

Therefore, it is clear that a court or administrative decision establishing the status of a property as part of the maritime domain will have a constitutive effect whenever the maritime domain includes land located more than six meters inland from the line of mean higher-high water. In such cases, the land acquires the status of maritime domain from the date the decision takes effect, not from the enactment of the ZPDML/2023, which established the so-called six-meter maritime domain (Article 10, Paragraph 11, ZPDML/2023). This would have been the case if the decision had only a declaratory effect.

It is also important to highlight a provision of the ZPDML/2023 that goes in the opposite direction, allowing the proposal of a maritime domain boundary narrower than the statutory minimum (Article 22, Paragraph 1, ZPDML/2023). This effectively permits a real reduction of the maritime domain. While this provision already existed in the previous law, it did not take root in practice, primarily due to frequent and often unsubstantiated objections from the competent state prosecutor's office. Nevertheless, from a practical and logical standpoint, its implementation would have been both feasible and reasonable.

In ZPDML/2023 (Article 22, Paragraph 2, ZPDML/2023), the legislator sought to address the status of buildings located less than six meters from the line of mean higher-high water, measured horizontally, which were constructed in compliance with the legal regulations in force at the time of their construction. This is certainly a positive step toward clarifying the legal status of such buildings.

However, the issue is that the legislator limited the provision to buildings of historical or cultural significance, or those with religious purposes, rather than extending its application to all lawfully constructed buildings, including all structures visible on 1968 orthophoto imagery at the time of their construction (Article 22, Paragraph 2, ZPDML/2023). This restriction is likely to generate numerous disputes in practice, especially in the context of marinas and other nautical tourism ports.

Article 18 of ZPDML/2023 stipulates that when a spatial plan provides for the construction and/or expansion of a special-purpose port, the maritime domain boundary must be determined first, followed by the port area boundary (the same applies to ports open to public traffic). We consider this an unnecessary dualism for the reasons already outlined.

When discussing the act establishing the maritime domain boundary and the act establishing the port area boundary, it is important to recognize that these are two acts of different legal character. The decision on the maritime domain boundary, given the legal status of the maritime domain under the law, has a declaratory character if the functional criterion is not applied, because it pertains to the maritime domain that exists by its very nature. In contrast, the act establishing the port area boundary, although ports are also considered maritime domain by law, has a mixed declaratory-constitutive character. This is because, based on the functional criterion, a new legal fact is created relative to the maritime domain defined by natural characteristics — the land portion of the port area, which is typically practically identical to the land portion of the maritime domain. From this, a clear intertwinement of the two institutions arises through overlapping boundaries (Ljubetić, 2019; Kundih, 2000).

It is important to note that under the previous Maritime Ports Act (NN 108/1995, 6/1996, 137/1999, 97/2000, 158/2000, ZML), there was no requirement to determine the maritime domain boundary before establishing a port area. Depending on whether the port was of special national interest or of county or local significance, the Government of the Republic of Croatia or the respective county authority, with prior government consent, would delineate the port area in ports open to public traffic in accordance with the spatial plan.

The opening of a special-purpose port, as well as the determination of its boundaries on land and at sea, was defined through the concession award for the activities for which the port was designated, and it had to be based on spatial plans, (Article 16, Paragraph 2, ZPDML). We believe this approach should still be applied today, given that the modern procedure for determining port area boundaries takes significantly longer to establish and record than the maritime domain boundaries themselves.

In practice, this means that concession procedures for marinas cannot begin until the port area boundary is established, which often extends the process over years rather than months. Consequently, it is unsurprising that there has been a stagnation in granting new concessions for marinas (State Bureau of Statistics, 2018).

After the Maritime Domain and Ports Act (ZPDML) came into force in 2003, the regulation of marinas underwent changes compared to the Maritime Ports Act (ZML). Specifically, it was stipulated that the port area boundary simultaneously constituted the maritime domain boundary (see Supreme Court of the Republic of Croatia ruling, VSRH, Revt-593/2017-2, February 26, 2020, which states: "...by operation of law, the boundary of the port area simultaneously represents the boundary of the maritime domain, regardless of whether the properties are registered as maritime domain in the land registry and whether they are recorded in the maritime domain cadaster").

However, with the enactment of ZPDML/2023, it was established that both the maritime domain boundary and the port area boundary must now be determined by the Ministry of the Sea, Transport, and Infrastructure's Boundary Commission, based on a proposal from the County Boundary Commission, through an administrative procedure.

On the other hand, the status of a port area is lost much more easily than the status of the maritime domain, since if spatial planning documents are amended so that the port is no longer planned, the portion of the former port area that does not constitute maritime domain will be recorded in the cadaster and land registry as property of the Republic of Croatia.

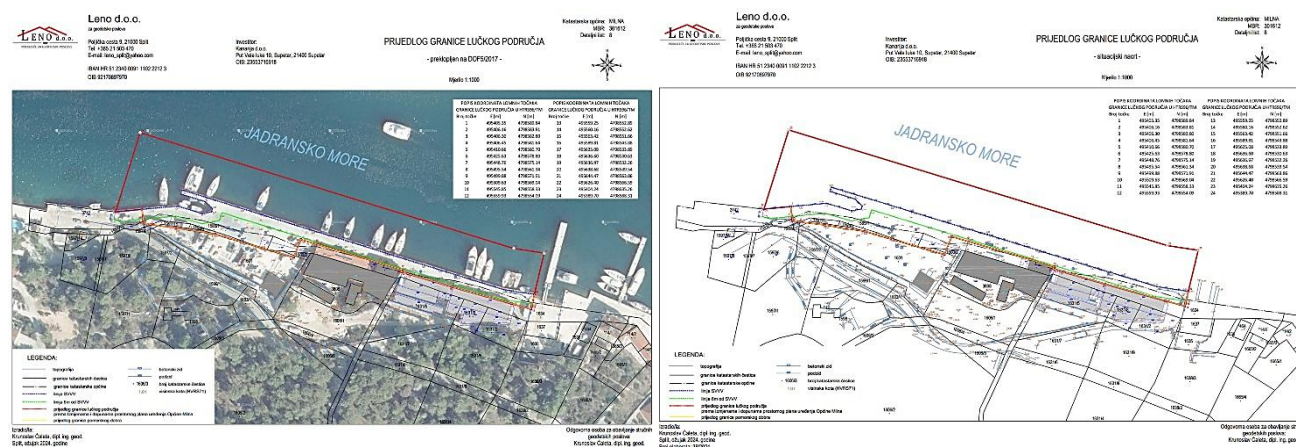


Figure 1. Situation demonstrating the coincidence of port area and maritime domain boundaries on land (excerpt from the geodetic survey report by LENO d.o.o. for determining Marina Kanarija (LNT Kanarija) in Milna). Example of a figure representing ship underway (Source: Microsoft Office stock images).

4. PROPERTY LAW ISSUES CONCERNING NAUTICAL TOURISM PORTS IN THE CONTEXT OF ARTICLE 75 OF THE ZPDML/2023

Modern legal systems, including the Croatian system, guarantee human rights and fundamental freedoms, including the right to property (private ownership in the broadest sense), which is a general principle of civil law.

In contrast to these general norms, the rules governing special property law regimes are primarily intended to realize, protect, and promote public interest (i.e., the interest of the Republic of Croatia) with respect to assets and goods that are, by the Constitution or by law, designated as being of particular importance to the Republic of Croatia. As a result, these rules often diverge to some extent from the principles of general property law (Gavella, 1991; Gavella et al., 2011).

If certain rules of special property law regimes are contrary to general property law norms and, at the same time, contrary to higher-ranking norms guaranteeing the right to property — insofar as they provide for the deprivation or restriction of ownership without fulfilling the conditions permitted under constitutional provisions or the provisions of conventions protecting property rights — such special rules will be denied legal effect.

It may therefore be concluded that regulating the status and transfer of real estate located immediately adjacent to the sea, or the first land plot next to a coastal plot where the maritime domain boundary has not been determined, as an object of a special property law regime within the spatial planning system, is of particular importance for nautical tourism ports. It is evident that in the contemporary legal system there is a growing number of special property law regimes applicable to specific categories of property, and that both their number and scope of application continue to expand.

In determining whether a property constitutes maritime domain, the factual situation should be decisive rather than relying on the formal status recorded — possibly long ago — in the land registry. However, the State Attorney's Office and the land registry departments of municipal courts maintain that the formal status prevails over factual (see the decision of the Municipal Court in Split, Permanent Service in Supetar, Ref. No. Z-43215/23, December 5, 2023). This means that if a property is registered as maritime domain, it is deemed such without the need to establish the factual situation, as it is presumed that the entire plot constitutes maritime domain.

This approach to determining and designating properties as maritime domain is, in our view, incorrect, even though it reflects a pragmatic method whereby all properties classified in the land register as maritime domain — within the meaning of the ZPDML/2023 — would be automatically recorded as such, without the need for a formal boundary determination procedure.

Frequent and often substantial changes in special legal regimes governing particular categories of property do not contribute to legal certainty and may give rise to various constitutional and broader legal issues, as well as other practical problems (Borković, 1995).

It must also be emphasized that the adoption and practical application of the new ZPDML/2023 has not significantly contributed to a systematic resolution of the legal status of the maritime domain, particularly regarding the specific nature of real rights applicable to it. Consequently, complex issues concerning maritime domain property and related proprietary rights will persist, with their resolution largely left to case-by-case practice.

This is further evidenced by the Conclusion of the Government of the Republic of Croatia of December 23, 2025, which adopted amendments concerning the regulation of property law relations for the economic use of the maritime domain. Due to lengthy procedures for determining maritime domain boundaries, and the fact that such boundaries are proposed by county commissions — without whose proposals the Ministry of the Sea, Transport and Infrastructure cannot proceed — the amendments extend the period for resolving property law relations by two years, until December 31, 2027, and extend the reporting period to the Government from every three months to every six months.

It should also be noted that, due to the highly indented nature of the Croatian coastline, no procedure for determining maritime domain boundaries can be uniform. Instead, each case requires a thorough and individualized approach, taking into account the specific characteristics of the coastal area of the Republic of Croatia.

In this context, particular attention must be paid to Article 75(1) of the ZPDML/2023, which provides that the Government of the Republic of Croatia may — but is not required to — adopt a decision granting temporary economic use of a special-purpose port area to the port authority in the event of extraordinary circumstances that could not have been foreseen, avoided, or prevented.

In practice, determining which extraordinary circumstances justify such a decision, and in which cases the Government will refrain from acting, will likely depend on how the Maritime Affairs Directorate of the competent ministry interprets Article 75. This creates significant legal uncertainty for users of the maritime domain when applying Article 75(1) of the new ZPDML/2023. In some cases, special-purpose ports may be entrusted to port authorities for temporary economic use, while in others, existing users may continue operating under comparable “extraordinary” circumstances.

This raises the further question of why the legislator limited temporary economic use exclusively to special-purpose ports. In our view, in situations involving unforeseeable extraordinary circumstances, the Government should consistently adopt decisions on temporary economic use — not only for special-purpose ports, but for all uses and facilities located on the maritime domain. At the same time, careful consideration must be given to defining such extraordinary circumstances. The expiry of a concession period cannot, under any circumstances, be regarded as an unforeseeable extraordinary event, nor can unresolved property law issues that hinder the granting of a new concession on the maritime domain (Kundih, 2025).

The competences of port authorities, whose primary function is the management and use of ports open to public traffic — whether at the state or county level — remain entirely unclear in the context of the temporary economic use of special-purpose ports by port authorities.

Accordingly, it must be emphasized that this legislative provision appears insufficiently reasoned and lacks a sound professional foundation, and is likely to generate additional complications within an already highly complex system involving the maritime domain, port area boundaries, and nautical tourism ports — complexities that may take generations to resolve.

It is difficult to justify a situation in which, for example, a nautical tourism port into which a concessionaire has invested substantial financial resources could be temporarily entrusted to a port authority for economic use, only for that same port — after one year and in the absence of fulfilled legal conditions for granting a concession — to be returned to general use as maritime domain.

General use of the maritime domain, pursuant to Article 11 of the ZPDML/2023, implies that everyone has the right to use the maritime domain in accordance with its nature and purpose. However, it must be emphasized that a special-purpose port, by its very nature and function, is always subject to a legal regime of partial or complete exclusion from general use.

The legal solution, under which after the expiry of a one year period of temporary economic use a special-purpose port is placed under the regime of general use if the conditions for issuing a concession are not met, is completely unclear. It is difficult to even conceive of a situation in which a nautical tourism port would be subject to a regime of general use, except perhaps in the context of its transfer to a port authority as a port open to public traffic.

Even in such a case, the port should not be entirely subjected to the regime of general use, given that it involves highly valuable, developed infrastructure with associated facilities in the maritime domain, which is ultimately of strategic interest to the Republic of Croatia. Furthermore, the legislator has failed to regulate who bears responsibility, after the expiry of temporary economic use and in the absence of conditions for granting a concession, for the maintenance, protection, and rehabilitation of the port area, as well as for preparing the necessary legal steps to place the port back into full economic or special use.

As a result of such legislative gaps, it is foreseeable that numerous situations will arise in which, following the expiry of concessions, prolonged property law disputes will occur, with uncertain outcomes and involving claims of significant financial value.

5. CONCLUSION

The maritime domain is a public good of particular importance to the Republic of Croatia and is governed by a distinct legal regime, characterized mainly by its exclusion from private legal transactions and its management by the state. In the context of nautical tourism development, a complex relationship arises between the maritime domain boundary and the port area boundary. Although these boundaries are often nearly identical in spatial terms, their legal bases and the procedures for their determination stem from different normative frameworks.

This divergence may give rise to concession-related disputes, inconsistencies in spatial planning, and property law uncertainties affecting investments in marina infrastructure. The dualism between the maritime domain boundary and the port area boundary thus presents a significant challenge for the governance of coastal areas and the development of nautical tourism. Therefore, harmonizing the normative framework, spatial planning instruments, and the concession regime is essential to ensure legal certainty and the stability of investments.

The maritime domain boundary is a status boundary of a public good, while the port area boundary is a functional boundary of a space designated for the performance of port activities. These are, therefore, two distinct legal concepts, each deriving from different normative foundations and determined through separate procedures. In practice, particularly in the context of nautical tourism ports, the land-based portion of a port almost invariably includes a developed coastal zone that already has the status of maritime domain.

Consequently, the port area boundary on land largely follows the maritime domain boundary, making the two almost identical in spatial terms. Any differences, which are rare in practice, are marginal, and do not significantly affect the scope of concessions. At sea, the situation is even clearer. The maritime domain includes the sea, seabed, and subsoil up to the boundary of the territorial sea of the Republic of Croatia, which is already normatively defined by law. By contrast, the port area boundary at sea is determined by spatial planning instruments (municipal, city, and county spatial plans) and acts establishing the port. Therefore, there is no practical need for additional determination of the maritime domain boundary at sea, as it is already established by statutory provisions and spatial planning documents.

The parallel or dual determination of maritime domain boundaries and port area boundaries has several practical and legal consequences:

- I. Normative duplication of procedures – two separate legal processes are required to define boundaries that often coincide spatially.
- II. Prolonged concession procedures – duplicative steps extend the timeline for granting concessions in nautical tourism ports.
- III. Legal uncertainty – parallel determinations create potential discrepancies between acts and ambiguity regarding the scope of concessions.
- IV. Administrative inefficiency – unnecessary procedural burdens arise without adding practical legal effect.

Given that, in nautical tourism ports, there is no real need for a special determination of maritime domain and port land boundaries, in addition to already determined maritime domain boundaries at sea. This is because the boundaries of the port almost always coincide with the previously established maritime domain boundaries, the maritime domain at sea is already defined by law, and the port area is functionally integrated within marina spaces. Therefore, dual determination of both boundaries in nautical tourism ports is neither legally necessary nor functionally justified.

In concession procedures for nautical tourism ports, defining the maritime domain boundary is sufficient as the port area boundary can be established through spatial planning documentation and the concession act.

Thus, separate determination of port area boundaries adds no real value where spatial and functional coverage is identical, since the maritime domain at sea is already legally defined, and the land portion is practically aligned. This approach simplifies administration, ensures legal clarity, and aligns with the functional realities of marina operations.

CONFLICT OF INTEREST

The authors declare that they have no known financial or non-financial conflicting interests in any material discussed in this paper.

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