

# Department of Defense Report to Congress



## Annual Freedom of Navigation Report

**Fiscal Year 2018**

Pursuant to Section 1275 of the National Defense Authorization Act for Fiscal Year 2018

The estimated cost of report or study for the Department of Defense is approximately \$13,000 in Fiscal Years 2018–2019. This includes \$50 in expenses and \$13,000 in DoD labor.

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## **Background:**

Throughout its history, the United States has asserted a key national interest in preserving the freedom of the seas, often calling on its military forces to protect that interest. Following independence, one of the U.S. Navy's first missions was to defend U.S. commercial vessels in the Atlantic Ocean and Mediterranean Sea from pirates and other maritime threats. The United States went to war in 1812, in part, to defend its citizens' rights to commerce on the seas. In 1918, President Woodrow Wilson named "absolute freedom of navigation upon the seas" as one of the universal principles for which the United States and other nations were fighting World War I. Similarly, before World War II, President Franklin Roosevelt declared that our military forces had a "duty of maintaining the American policy of freedom of the seas."

The United States' interest in the freedom of the seas extends beyond safeguarding vessels from the physical threats posed by pirates and submarines. Excessive maritime claims are attempts by coastal States to unlawfully restrict the freedoms of navigation and overflight and other lawful uses of the sea. Excessive maritime claims are made through laws, regulations, or other pronouncements that are inconsistent with international law as reflected in the Law of the Sea Convention. If left unchallenged, excessive maritime claims could infringe the rights, freedoms, and lawful uses of the sea enjoyed by the United States and other nations.

As President Ronald Reagan pronounced in the United States Oceans Policy in 1983, the United States "will not ... acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight." Instead, the United States "will exercise and assert its rights, freedoms, and uses of the sea on a worldwide basis in a manner that is consistent with the balance of interests" reflected in the Law of the Sea Convention.

## **The Freedom of Navigation Program**

The United States demonstrates its resistance to excessive maritime claims through the U.S. Freedom of Navigation (FON) Program. Formally established in 1979, the program consists of a two-pronged, complementary strategy to support the global mobility of U.S. forces and the unimpeded traffic of lawful commerce. The Department of State leads the first prong by diplomatically protesting excessive maritime claims. The Department of Defense complements those efforts by conducting operational challenges against excessive maritime claims.

DoD's operational challenges are also known as "FON assertions," "FON operations," and "FONOPs." Their comprehensive, regular, and routine execution supports the longstanding and global U.S. national interest in freedom of the seas. Activities conducted by DoD under the FON Program are deliberately planned, legally reviewed, properly approved, and professionally conducted. FON assertions consistently challenge excessive maritime claims made by a wide

variety of coastal States, including allies, partners, and competitors. They are not focused on any particular claimant, and they are not tied to current events.

**Annual FON Report:**

Each year, DoD releases an unclassified FON Report identifying the coastal States and excessive maritime claims that U.S. forces operationally challenged over the fiscal year.

Below is a summary of excessive maritime claims DoD challenged through operational assertions and activities during the period of October 1, 2017, through September 30, 2018, to preserve the rights, freedoms, and uses of the sea and airspace guaranteed to all nations by international law. In sum, the United States challenged the excessive maritime claims of 26 claimants. Many excessive claims were challenged multiple times. The claimant States’ specific laws, regulations, and other proclamations articulating the excessive maritime claims are cited in brackets. To maintain the operational security of U.S. military forces, the FON Report includes only general geographic information on the location of each operational challenge.

For a complete list of all coastal States making excessive maritime claims, as well as the years those claims were last operationally challenged by U.S. forces under the FON Program, see the DoD Maritime Claims Reference Manual, available online at [www.jag.navy.mil/organization/code\\_10\\_mcrm.htm](http://www.jag.navy.mil/organization/code_10_mcrm.htm).

<b>Freedom of Navigation Operational Challenges Fiscal Year 2018</b>		
<b>Claimant</b>	<b>Excessive Maritime Claim</b> <small>An asterisk indicates multiple operational challenges to the excessive claim.</small>	<b>Geographic Area or Location</b>
Albania	Prior authorization required for foreign warships to enter the territorial sea. [Decree No. 4650 on the Boundaries of Albania, Mar. 9, 1970.]	Adriatic Sea
	Straight baselines not drawn in accordance with the law of the sea. [Decree No. 4650, as amended by Decree No. 7366, Mar. 9, 1990.]	Adriatic Sea
Burma	Straight baselines not drawn in accordance with the law of the sea. [The Law Amending the Territorial Sea and Maritime Zones Law, the State Peace and Development Council Law No. 8/2008, Dec. 5, 2008.]	Andaman Sea
Cambodia	Straight baselines not drawn in accordance with the law of the sea. [Decree of the Council of State, July 13, 1982.]	Gulf of Thailand

China	* Straight baselines not drawn in accordance with the law of the sea. [Declaration of the Government of the People's Republic of China on the Baselines of the Territorial Sea of the People's Republic of China, May 15, 1996.]	Paracel Islands
	* Restrictions on foreign aircraft flying through an Air Defense Identification Zone (ADIZ) without the intent to enter national airspace. [Ministry of National Defense Announcement, Nov. 23, 2013.]	East China Sea
	* Domestic law criminalizing survey activity by foreign entities in the exclusive economic zone. [Order No. 75, Surveying and Mapping Law, Dec. 2002.]	South China Sea
	* Jurisdiction over airspace above the exclusive economic zone. [Order No. 75, Surveying and Mapping Law, Dec. 2002.]	South China Sea and East China Sea
	* Claims security jurisdiction in the contiguous zone. [Law on the Territorial Sea and Contiguous Zone, Feb. 1992.]	South China Sea
	* Prior permission required for innocent passage of foreign military ships through the territorial sea. [Declaration upon Ratification of 1982 Law of the Sea Convention, June 7, 1996.]	Paracel Islands and Spratly Islands
	Actions and statements that indicate a claim to a territorial sea around features not so entitled (i.e., low-tide elevations).	Spratly Islands
Croatia	Prior notification required for foreign warships to exercise innocent passage in the territorial sea. [The Maritime Code of 1994 (as amended), art. 23, Jan. 1994.]	Adriatic Sea
Dominican Republic	Straight baselines not drawn in accordance with the law of the sea. [Act 66-07, May 22, 2007.]	Caribbean Sea
Egypt	Prior notification required for foreign warships to exercise innocent passage in the territorial sea. [Declaration upon Ratification of 1982 Law of the Sea Convention, August 26, 1983; Declaration upon Accession to Basel Convention, Oct. 1995.]	Red Sea
	Straight baselines not drawn in accordance with the law of the sea. [Presidential Decree No. 27/1990, Jan. 9, 1990.]	Red Sea

Haiti	Straight baselines not drawn in accordance with the law of the sea. [Presidential Decree, April 6, 1972; Presidential Decree No. 38, Apr. 8, 1977.]	Caribbean Sea
Indonesia	* Limits on archipelagic sea lane passage through normal routes used for international navigation. [Government Regulation No. 37 on the Rights and Obligations of Foreign Ships and Aircraft Exercising the Right of Archipelagic Sea Lane Passage through Designated Archipelagic Sea Lanes, June 28, 2002.]	Lombok Strait
Iran	* Restrictions on the right of transit passage through the Strait of Hormuz to Parties of the United Nations Convention on the Law of the Sea. [Declaration upon Signature of the 1982 Law of the Sea Convention, Dec. 10, 1982.]	Strait of Hormuz
	* Prohibition on foreign military activities and practices in the exclusive economic zone. [Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea, art. 16, Apr. 20, 1993.]	Persian Gulf
Japan	Straight baselines not drawn in accordance with the law of the sea. [Enforcement Order of the Law on Territorial Sea and the Contiguous Zone, Cabinet Order No. 210 of 1977, as amended by Cabinet Order No. 383 of 1993, Cabinet Order No. 206 of 1996, and Cabinet Order No. 434 of 2001, Apr. 2, 2002.]	East China Sea
Malaysia	* Prior authorization required for nuclear-powered ships to enter the territorial sea. [Declaration upon Ratification of the 1982 Law of the Sea Convention, Oct. 14, 1996.]	Strait of Malacca
	Prior consent required for military exercises or maneuvers in the exclusive economic zone. [Declaration upon Ratification of the 1982 Law of the Sea Convention, Oct. 14, 1996.]	South China Sea
Maldives	* Prior authorization required for all foreign vessels to enter the exclusive economic zone. [Maritime Zones of Maldives Act No. 6/96.]	Indian Ocean

Oman	* Prior permission required for innocent passage of foreign military ships through the territorial sea. [Declaration upon Ratification of 1982 Law of the Sea Convention, Aug. 17, 1989.]	Strait of Hormuz
	* Requirement for innocent passage through the Strait of Hormuz, an international strait. [Declaration upon Ratification of 1982 Law of the Sea Convention, Aug. 17, 1989.]	Strait of Hormuz
Pakistan	Prior consent required for military exercises or maneuvers in the exclusive economic zone. [Declaration upon Ratification of the 1982 Law of the Sea Convention, Feb. 26, 1997.]	Arabian Sea
Philippines	* Claims archipelagic waters as internal waters. [Constitution of the Republic, art. 1, Jan. 17, 1973.]	Sulu Sea
Saudi Arabia	Claims that innocent passage does not apply in territorial sea when a high seas or exclusive economic zone route exists that is equally suitable with regard to navigational and hydrographic features. [Declaration upon Ratification of 1982 Law of the Sea Convention, Apr. 24, 1996.]	Persian Gulf
Sierra Leone	* Prior written consent required for warships to pass through the territorial sea. [Maritime Zones Establishment Decree, Mar. 28, 1996.]	Atlantic Ocean
Slovenia	Prior notification required for foreign warships to exercise innocent passage in the territorial sea. [Maritime Code, art. 18, Mar. 23, 2001.]	Gulf of Trieste
	Foreign warships required to confine innocent passage to designated sea lanes or traffic separation schemes in the territorial sea. [Maritime Code, art. 18, Mar. 23, 2001.]	Gulf of Trieste
Sri Lanka	Prior consent required for foreign warships to transit the territorial sea. [Maritime Zones Law No. 22, § 3, Sept. 1, 1976.]	Laccadive Sea
	Claims security jurisdiction in the contiguous zone. [Maritime Zones Law No. 22, § 4, Sept. 1, 1976.]	Laccadive Sea

Taiwan	* Prior notification required for foreign military or government vessels to enter the territorial sea. [Law on the Territorial Sea and the Contiguous Zone, art. 7, Jan. 21, 1998.]	Paracel Islands, Spratly Islands
Thailand	Straight baselines not drawn in accordance with the law of the sea. [Announcement of the Office of the Prime Minister Concerning Straight Baselines and Internal Waters of Thailand Area 4, Aug. 17, 1992.]	Gulf of Thailand
United Arab Emirates	Prior permission required for foreign warships to exercise innocent passage in the territorial sea. [Federal Law No. 19 of 1993 in Respect of the Delimitation of the Maritime Zones of the United Arab Emirates, art. 5, Oct. 17, 1993.]	Persian Gulf
Venezuela	* Prior permission required for military operations in the exclusive economic zone and Flight Identification Region (FIR). [Venezuela has challenged the presence of U.S. Government vessels operating seaward of the territorial sea and of U.S. Government aircraft operating inside the FIR, without permission.]	Caribbean Sea
Vietnam	* Prior notification required for foreign warships to enter the territorial sea. [Law of the Sea of Vietnam, Law No. 18/2012/QH13, art. 12, June 21, 2012.]	Paracel Islands, Spratly Islands
	Straight baselines not drawn in accordance with the law of the sea. [Statement of 12 November 1982 by the Government of the Socialist Republic of Viet Nam on the Territorial Sea Baseline of Viet Nam, Nov. 12, 1982.]	South China Sea
Yemen	* Prior permission required for foreign warships to transit the territorial sea. [Declaration upon Ratification of the 1982 Law of the Sea Convention, July 21, 1987.]	Bab al-Mandeb Strait