

Blue Water Navy Vietnam Veterans Association



Written Testimony

submitted by the

**Blue Water Navy Vietnam Veterans Association
to the**

**United States Senate
Veterans Affairs Committee**

For a May 13, 2015 Hearing

Regarding Senate Bill 681



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INTRODUCTION

Despite previous attempts by Congress to provide medical and economic benefits for the "toxic wounded"¹ veterans of the Vietnam War, there are still thousands of these veterans being denied basic medical care and disability compensation by the Department of Veterans Affairs (DVA or VA). These include veterans who served both on land and at sea during that conflict. The largest group by far of Vietnam veterans currently being denied service-connected benefits for toxic wounds includes those who served on the waters in and around Vietnam. These men are suffering the effects of dioxin poisoning through their exposure to the herbicide Agent Orange. For these veterans, the results of 'Chemical Warfare gone awry' have been showing up in their lives as one or more of the acknowledged diseases² caused by the components of the herbicide Agent Orange. These maladies have been rearing their ugly heads for decades as the poison works its destruction on a time-released basis.³ These veterans have also watched as their children and grandchildren present with birth defects and later-life health problems that have afflicted their innocent progenies and further burdened their already-suffering consciences. Their experience is not unique; it is also being felt by those who served with boots on ground. These sea-based veterans are not asking for anything new. They are asking for a reinstatement of benefits previously afforded them by the Agent Orange Act of 1991. We are now entering the 40th year since the end of that thirteen year conflict. For these veterans, the Vietnam War has never ended. It is now time to stop this miscarriage of justice by acknowledging that there was only one causal agent responsible for multiple identical diseases in men who were on the ground and those who were at sea, only separated by a couple dozen

¹ Passage of the Agent Orange Act of 1991 provided VA Benefits to all veterans of the Vietnam War who showed symptoms of an Agent Orange-related disease. In 2002, the VA removed all veterans whose feet did not touch the solid ground of mainland Vietnam. Those veterans are now asking to be reinstated under the provisions of the AOAct of 1991. (Origin of the identifier "Toxic Wounded" is acknowledged as Mr. Rick Weidman of the Vietnam Veterans of America.)

² The VA has enumerated several types of cancers, heart diseases, diabetes and its secondary effects, and other diseases which can be found on the VA's Website and in VA literature.

³ Studies have shown that dioxin can cause delayed onset with aggressive types of many of the acknowledged diseases that can be charted out on a consistent timeline. "Agent Orange exposure, Vietnam War veterans, and the risk of prostate cancer," by Karim Chamie MD, et. al, addresses the appearance of prostate cancer in Vietnam veterans in a 13,000+ veteran study thus: "The mean time from exposure to diagnosis was 407 months."

miles or less. No other toxin than Agent Orange-dioxin can cause such a wide range of maladies. The mere fact of them having one of those specific diseases should automatically provide them with the presumption of exposure to herbicides in Vietnam. The passage of S-681 / HR-969 can bring an end to the Blue Water Navy Vietnam veterans' suffering.

TESTIMONIAL BODY

Following the unanimous passage of PL-102-4, The Agent Orange Act of 1991 was set in stone as Law of the Land; or so we thought. The VA wrote up the initial rules of eligibility in their M21 Adjudications Manual identifying anyone who served within the Theater of Combat⁴ as eligible for a presumption of exposure⁵ to the herbicide Agent Orange, which contained TCDD, the deadliest form of dioxin known to man.⁶ In case anyone thinks that a large quantity of this dioxin is required to wreak havoc on living organisms, it must be noted that the EPA's over-generous "safe drinking water" level is a dilution of one part in 30 quadrillion⁷ and that a controlled dioxin study done in 1996 using lab rats found that those animals exposed to dioxin at 10 parts per trillion (ppt) experienced severe suppression of their immune system resulting in

⁴ The "Theater of Combat", the "Combat Zone," the "War Zone" and the area for award of the Vietnam Service Medal were the same area. As declared by President L.B. Johnson on July 8, 1965 as Executive Order 11231, the Vietnam Service Medal was awarded to veterans who served within the precisely outlined areas which the Department of Defense specified as the War Zone for Vietnam. Please see the image at <http://www.bluewaternavy.org/yournavy.htm>

⁵ The 10/06/93 instruction in the VA's M21 Manual states: "(1) It may be necessary to determine if a veteran had "service in Vietnam" in connection with claims for service connection for non-Hodgkins lymphoma, soft-tissue sarcoma and chloracne. See paragraph 5.03c. In the absence of contradictory evidence, "service in Vietnam" will be conceded if the records show that the veteran received the Vietnam Service Medal." (Compare this to Footnote 10)

⁶ The World Health Organization states, "Dioxins are highly toxic and can cause reproductive and developmental problems, damage the immune system, interfere with hormones and also cause cancer.....Some 419 types of dioxin-related compounds have been identified but only about 30 of these are considered to have significant toxicity, with TCDD being the most toxic."
<<http://www.who.int/mediacentre/factsheets/fs225/en/>>

⁷ This information is located on the EPA Website titled "Basic Information about Dioxin (2,3,7,8-TCDD) in Drinking Water" A quadrillion is 10 raised to the minus 15th power.
<http://water.epa.gov/drink/contaminants/basicinformation/dioxin-2-3-7-8-tcdd.cfm>

fatal inability to resist common strands of influenza. Ten parts per trillion is the equivalent of one drop of dioxin in a water solution equally distributed in a volume of train cars 10 miles long. But no one knows what the lowest threshold of TCDD exposure is. Therefore, any statement by the VA indicating that dioxin did not occur in "sufficient amounts to cause health problems" is as medically and scientifically inaccurate as one can get. "Safe levels" of TCDD reach beyond our current scientific ability to measure units that small!

In order to make up for the absolute lack of documentation⁸ regarding the whereabouts and the measurements of Agent Orange usage during all of the Vietnam War, Congress adopted the rule of "presumption of exposure" and made the determination that the proof of exposure for any individual was based on that veteran's diagnosis of one of the diseases presumed to be caused by the TCDD dioxin. This was purposefully set up as "presumptive" because there was no documentation of military or other origin that contained quantifiable evidence for proof exposure, whether on land or at sea. Presumption of exposure to herbicide in Vietnam can most accurately be defined as "the definite existence of a potential for TCDD exposure."⁹ That descriptive applies to every ship of the Seventh Fleet that sailed within the Vietnam Combat Zone.

The M-21 Manual's original instructions afforded the presumptive status to any veteran in receipt of the Vietnam Service Medal (VSM) as the determining factor.¹⁰ The instructions in the Manual were changed in 2002 to state that eligibility for the presumption of exposure extended

⁸ "Because of the IMPOSSIBILITY that most Vietnam veterans could prove that they had been exposed to Agent Orange or other herbicides in Vietnam during the war, the 1991 Agent Orange Act created a presumption of service connection.", (emphasis added here), Committee on Blue Water Navy Vietnam Veterans and Agent Orange Exposure, 2011.

⁹ Personal correspondence with Dr. Wayne Dwernychuk, world renowned Environmental Scientist and acknowledged Vietnam dioxin contamination specialist, 2014.

¹⁰ The M-21 Manual as of February 27, 2002 states: "Service in Vietnam" for the purpose of presumption of exposure to herbicides cannot be conceded based on receipt of the Vietnam Service Medal, because the presumption of exposure applies to land exposure only. The awarding of this medal was not limited to armed forces members whose service involved duty or visitation on land in Vietnam." "A veteran must have actually served on land within the Republic of Vietnam (RVN) to qualify for the presumption of exposure to herbicides.. 38 CFR Sec. 3.307(a)(6). The fact that a veteran has been awarded the Vietnam Service Medal does not prove that he or she was "in country."

only to veterans who served with their boots-on-ground “in Vietnam.” However, even that definition is being used inconsistently because those who set foot on any of the many islands off the coast of Vietnam (such as Con Son Island and Phu Quac Island) are also afforded the presumption of exposure by DVA for having set foot on ground in those distant offshore places. That change created the division in an otherwise unified world of the Vietnam War veteran. There was now, for the first time, an offshore Blue Water Navy veteran and an “in country, boots-on-ground” veteran. In the real world, this distinction does not exist.

Over the years since 2002, the DVA has ignored valid scientific and medical studies as well as the Congressionally-mandated counsel of the Institute of Medicine (IOM) in the recognition of evidence that ships of the Seventh Fleet were likely to have been contaminated by the dioxin-laden Agent Orange through a wide range of possible routes of exposure.¹¹ Under the rule of presumptive exposure that has been applied to every veteran who served with boots on ground, in the absence of contradicting evidence, nothing beyond the potential for exposure is needed to proclaim Agent Orange-dioxin as the cause of the numerous diseases a veteran could be diagnosed with as long as the diagnosis for at least one of those diseases is made. The Blue Water Navy veterans have had diagnoses of all these diseases, and their potential for exposure has never been contradicted by any evidence. To the contrary, the IOM as well as the Australian University of Queensland’s National Research Centre for Environmental Toxicology and numerous other studies have proclaimed valid evidence for that exposure.¹² Additionally, the DVA has been guilty of outright misrepresentation of scientific and medical data that provides strong evidence in favor of assigning the presumption of exposure to the men who served offshore Vietnam.

¹¹ Please refer to the online study, “A Re-Analysis of Blue Water Navy Veterans and Agent Orange Exposure,” www.bluewaternavy.org/ReIOM.htm

¹² The Military-Veterans Advocacy, Inc. submission of written testimony for this hearing, which is included in its entirety into this testimony by reference, contains detailed information on this specific subject. John Wells, Esq., author of that testimony is a subject matter expert on the work of the University of Queensland and addresses the topic of this specific valid evidence in detail.

The VA lied about the conclusions of the IOM's 2011 study¹³ on Vietnam Navy veterans and their exposure to Agent Orange. The conclusions of the IOM in that study actually constituted the second of four times that Agency strongly suggested there were potential routes of exposure for the Navy ships or stated outright that Blue Water Navy sailors should be included in the presumption. Looking at the chronological evidence of the Institute of Medicine's documents that address this issue, we find this chain of thought¹⁴:

The First Report

The IOM's "Veterans and Agent Orange: Update: 2008" (released July 24, 2009) clearly states: "...members of the Blue Water Navy should not be excluded from the set of Vietnam-era veterans with presumed herbicide exposure." The Update: 2008 is also the IOM's first serious examination of an Australian report on ship-board water distillation from a 2002 Queensland, Australia Study titled "Examination of the Potential Exposure of Royal Australian Navy (RAN) Personnel to Polychlorinated Dibenzodioxins and Polychlorinated Dibenzofurans via Drinking Water." This concept of contaminated water aboard both American and Australian naval vessels now plays an important part in the assumptions regarding plausible pathways for Agent Orange/Dioxin (AO/D) contamination of the offshore Blue Water Navy personnel of both countries.

The Second Report

In October, 2009, the DVA tasked the IOM with an 18-month study to determine whether the Vietnam veterans in the Blue Water Navy experienced exposures to herbicides and their contaminants comparable with those of the Brown Water Navy Vietnam veterans and those on the ground in Vietnam. By its very wording, this started off as a "comparative" study, a concept that fundamentally violates the concept of presumptive exposure. However, as it turned out, the conclusions of the IOM Report "Blue Water Navy Vietnam Veterans and Agent Orange Exposure," released in May, 2011 was a further set-back to the DVA's position. That report concluded:

¹³ The VA's fabrication of a conclusion to the IOM's 2011 study prompted this Association's call for the Public Censure of the DVA. Please refer to this on-line information:
<http://bluewaternavy.org/publiccensure.htm>

¹⁴ From a December 21, 2013 Release by this Association entitled "Beyond Arbitrary and Capricious."

- There isn't enough data to make any statement regarding 'quantitative' exposure amounts for not only the offshore Blue Water Navy, but for the troops with 'boots-on-ground' and those who patrolled the rivers and inland waterways (the 'brown water') of Vietnam; and
- There can be no statement of certainty that any group of Vietnam veterans had even experienced 'qualitatively' different exposures to herbicides.

Of course, this information was already known and was the basis for using 'presumptive exposure' when the 1991 Agent Orange Act was written. Because no measurement data existed from the time of the Vietnam War, all statements attempting to address such measurements will always be only pure speculation. We know that the entire environment of South Vietnam was contaminated with AO/D, but we don't know how much AO/D was released in any specific area and we don't know how much AO/D contaminated any specific individual or group.

The Third Report

The IOM's "Veterans and Agent Orange: Update 2010" (released in 2011, shortly after the release of the 2011 IOM Blue Water Navy and Agent Orange Report) reiterated that "the NAS [National Academy of Science] convened the Blue Water Navy Vietnam Veterans and Agent Orange Exposure Committee to address that specific issue; its recently released report (IOM, 2011) found that information to determine the extent of exposure experienced by Blue Water Navy personnel was inadequate, but that there were possible routes of exposure." This report reprinted statistical tables from the results of the 1990 CDC Selected Cancers Study which indicate that Blue Water Navy personnel had the highest risk level for certain Agent Orange-related cancers. It goes on to say that "US Navy riverine units are known to have used herbicides while patrolling inland waterways (IOM, 1994; Zumwalt, 1993), and it is generally acknowledged that estuarine waters became contaminated with herbicides and dioxin as a result of shoreline spraying and runoff from spraying on land. Thus, military personnel who did not serve on land were among those exposed to the chemicals during the Vietnam conflict."

The Fourth Report

In their bi-annual report "Veterans and Agent Orange: Update: 2012," released December 3, 2013, the IOM repeats and refers back to the findings of the three previous key reports that indicate:

- The individuals who served offshore Vietnam should not be exempted from receipt of VA benefits for Agent Orange-related disabilities, as there is no medical or scientific

evidence to deny those veterans the benefits that other service members from the Vietnam War receive on a regular basis;

- There were several viable pathways for exposure of the crews on the ships of the Seventh Fleet who served offshore Vietnam;
- There is no evidence that Agent Orange/Dioxin did not poison the veterans in question and there is overwhelming evidence indicating a high probability that it did;
- No single group of veterans that served anywhere in Southeast Asia should be removed from the benefits for presumptive exposure to the deadly herbicides used in the broader geographical area throughout the Vietnam War. In the December 2013 release of “Veterans and Agent Orange: Update: 2012,” the IOM once again reminded the DVA that no evidence exists for reliably segmenting Vietnam veterans by location if intending to address exposure to the carcinogenic element (TCDD) found in the herbicides used throughout Southeast Asia. They also stated that even though reliable scientific measurements do not exist to quantify the exact amounts of any TCDD exposure for any Vietnam veteran, there were possible and plausible routes for exposure of Blue Water Navy personnel.

The Blue Water Navy Vietnam Veterans Association spotted the DVA’s dishonesty the day DVA published its conclusions in the Federal Register (Notice Citation 77 FR 76170) on December 26, 2012, when VA declared the results of the IOM’s study indicated “Presumption of Exposure to Herbicides for Blue Water Navy Vietnam Veterans Not Supported.” We immediately called for the Public Censure of DVA for that distortion of fact. The Court of Appeals for Veterans Claims ruling of April 23, 2015, fully vindicated us, saying the IOM report “falls short of the Secretary’s assertion that the report specifically “confirmed” that there was no likelihood of exposure to herbicides in Da Nang Harbor.”¹⁵

¹⁵ United States Court of Appeals for Veterans Claims, No. 13-3339, Robert H. Gray v. Robert A. McDonald, decided April 23, 2015.

COST

At the time of this writing, the Congressional Budget Office (CBO) has not yet released a score for S-681/HR-969. However, our deep and measured analysis reveals several key points which can be used to make a cost determination. Our documentation shows that approximately 174,000 individuals¹⁶ served offshore Vietnam in the Territorial Waters as defined as 12 miles from Baseline.¹⁷ Of those, we estimate that less than 35,000 will be eligible to file for service-connected disability under this new legislation. Actual claims received should not exceed about 20,000. Of those, about 15,000 could pass the stringent requirement of a current diagnosis of an existing disability warranting a scheduler assignment of a disability percentage. Translating this into dollars, the 10-year period of this legislation should cost less than \$1 Billion with the actual figure perhaps closer to \$800 Million. These estimates await verification by the CBO, but have passed the tight scrutiny of the Blue Water Navy Vietnam Veterans Association.

CONCLUSION

It serves no purpose to lambast the DVA for its history of moral and humanitarian sins. It only needs to once again be pointed out that the pool of American military blood is creating a growing stain on the soul of this Country, more so every day that this legislation awaits enactment. Support for this legislation is medically and scientifically well grounded; it has been shown to be hugely popular in a wide expanse of grassroots American institutions¹⁸; and it is a logical and morally sound decision to support this legislation regarding disability benefits for the Blue Water Navy Vietnam veterans who currently suffer from one of the VA-recognized

¹⁶ The origin of these numbers is from documentation of the DoD Manpower Data Center Reports vetted by the Congressional Research Service.

¹⁷ Vietnam uses the Straight Baseline method of defining their Territorial Sea Boundary. The Baseline typically stands out further to sea than the shoreline and is drawn to encompass offshore islands to which it claims ownership. The Military-Veterans Advocacy, Inc. submission of written testimony, which is included in its entirety into this testimony by reference, includes a map showing the Theater of Combat and the 12-mile extension beyond the Baseline as defined by Vietnam.

¹⁸ The BWNVVA has amassed Resolutions passed by 5 cities, 7 counties, 2 tribal councils, 13 states, with one state pending. These Resolutions represent support for the Blue Water Navy cause dating back so legislation from 2009 and show a wide range of popular support from the heartlands of America. A list identifying these governmental entities is included as the Appendix to this Testimony.

diseases caused by Agent Orange. We are asking for the application of reason and consistency in the actions of the DVA. This legislation provides a way for this Committee to do just that. Your support of this legislation will be deeply appreciated.

Submitted as written testimony to Committee Chairman Johnny Isakson, Ranking Member Richard Blumenthal and the other distinguished members of the Senate Committee on Veterans Affairs this 13th day of May, 2015



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Blue Water Navy Vietnam veteran, RVN 1969

APPENDIX ONE

**LIST OF GRASSROOT AMERICAN
GOVERNMENTAL ENTITIES WHO HAVE
PASSED RESOLUTIONS IN FAVOR OF
THE BLUE WATER NAVY LEGISLATION**

LIST OF CURRENT RESOLUTIONS

Resolutions from State, County and Municipal entities in support of The Blue Water Navy Agent Orange legislation as it has appeared in the House of Representatives since the Session of 2009, with their date of adoption shown. Actual documents can be seen on-line at <http://www.bluewaternavy.org/forum/index.php>:

City of Wawarsing, NY	3/20/2014
City of Bellingham, WA	3/10/2014
City of Littleton, CO	1/21/2014
City of Beacon Falls, CT	5/13/2013
City of Seymour, CT	11/6/2013

Inter-Tribal Council of Nevada	4/25/2014
Wharton County, TX	4/14/2014
Delaware County, NY	3/12/2014
Fallon Paiute-Shoshone Tribal Council, NV	3/11/2014
Saratoga County, NY	2/25/2014
Ulster County, NY	1/22/2014
Sullivan County, NY	12/19/2013
Riverside County, CA	3/6/2013
St. Tammany Parish, LA	2010

State of Oregon	in process
State of Vermont	5/31/14
State of Rhode Island	5/14/2014
State of Alaska	4/4/2014
State of Hawaii	4/4/2014
State of Pennsylvania	4/2/2014
State of Arizona	2/24/2014
State of Texas	5/17/2013
State of Kansas	2/16/2013
State of New York	6/18/2012
State of Maryland	5/8/2011
State of Tennessee	5/24/2010
State of Louisiana	4/28/2010
State of Alabama	1/12/2010
State of Texas	5/30/2009

TOTALS:

5 Cities
7 Counties
2 Tribal Councils
13 States
1 State Pending