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FOUNDATION

Improving Lives. **Finding the Cure.**

BLUE WATER NAVY VIETNAM VETERANS ACT OF 2017



**VETERANS AGAINST
MYELOMA**

A Division of International Myeloma Foundation

Speakers



PAUL BECKER

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LEARNING OBJECTIVES

1. To become informed on the history of Blue Water Navy Vietnam Veteran (BWN) benefits relating to Agent Orange exposure;
 - a) To understand who was originally eligible for benefits under the U.S. Department of Veterans Affairs (VA); and
 - b) How the eligibility has changed.
2. To understand the current legislative landscape; and
3. To learn how you can help establish benefits for Blue Water Navy Vietnam Veterans.

VIETNAM AND AGENT ORANGE

- In 1961, South Vietnam President Ngo Dinh Diem requested the assistance of the United States in spraying herbicides to kill vegetation that both fed and concealed North Vietnamese fighters. President Kennedy approved the plan, which became known as Operation Ranch Hand.
- It is estimated that over 20,000,000 gallons of various chemicals were sprayed between 1962 and 1971. The term "Agent Orange" comes from the orange stripes on the barrels containing chemicals like dioxin.
- U.S. servicemen were unknowingly exposed to high doses of these chemicals, often being told the chemicals were harmless. A quarter of those exposed have presented with serious medical side effects, including higher instances of myeloma.



BLUE WATER NAVY EXPOSURE

- Those who stepped foot ashore on Vietnam were not the only ones exposed to herbicide chemicals. U.S. Naval operations were conducted within the territorial seas of Vietnam, also referred to as “blue water”.
 - Aircraft carriers conducted bombing runs and pilot rescue throughout the war;
 - Support ships conducted bombardment and surveillance activities close to shore; and
 - Transport ships were used to load and offload cargo from the country with some naval vessels docked in deep water harbors such as Da Nang.
- Water distillation machinery in Royal Australian Navy ships was found to magnify the strength of chemicals in dioxin-tainted seawater in a 2002 study. The same equipment was present on U.S. Naval vessels.



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AGENT ORANGE ACT OF 1991

- Since 1977 the VA has received Agent Orange related claims for exposure.
 - Each case required documented proof of exposure and relation to service for the disease being requested for coverage, leading to many claims being denied.
- Congress passed the Agent Orange Act of 1991 in an effort to make Agent Orange claims easier for veterans.
 - The Act stated that certain diseases tied to chemical exposure would be presumed related to a veteran's military service and therefore make them eligible for benefits.
 - Blue Water Navy Veterans who served within the territorial waters of Vietnam received presumptive exposure status for Agent Orange.



LIMITATION OF BENEFITS

In 2002, the VA changed the definition of a Vietnam Veteran under the Agent Orange Act of 1991 to be “someone who actually served on land in the Republic of South Vietnam (RVN).” For the purposes of herbicide exposure, that eliminated previously eligible veterans whose feet did not touch the soil of South Vietnam, or a dock or a pier that can be considered an extension of the land.

- This effectively ended compensation for thousands of Blue Water Veterans who had already been receiving care and other benefits.
- In 2008 a federal appeals court upheld the denial of benefits, but a 2015 court decision found the 2002 ruling by the VA to be arbitrary and capricious, a legal term that means the ruling was made without considering the facts of the matter. This invalidated the VA ruling and required new rulemaking from the VA, although BWN vets are still excluded from presumptive exposure.
- Blue Water Veterans can only receive coverage if they are able to show exposure “on a factual basis,” meaning that a documented instance of exposure is needed for a successful benefit claim.

“The water we drank and bathed with was distilled from saltwater contaminated with Agent Orange. ”

— Navy veteran who served in Gulf of Tonkin



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RECENT VICTORIES

In April of 2015, the U.S. Court of Appeals for Veterans Claims (CVAC) in *Gray V. McDonald* found that the VA's interpretation of its regulations was inconsistent when determining whether a harbor was within an inland waterway or offshore and that the VA ignored the issue of whether a harbor was exposed to aerial spraying in determining presumptive exposure. This ruling established that several harbors of Vietnam, specifically Da Nang, Cam Ranh Bay and Vung Tau, are within the definition of inland waterways established by the VA and allow veterans whose ships were previously docked in the harbors to receive benefits by providing them with presumptive exposure, even if the sailors themselves were not on the ship at the time these ships were docked at harbor, as the harbors themselves were active spray areas.

- A list of ships and timeline eligibility is [available on the VA website](#).

While The U.S. Court of Appeals for Veterans Claims found the 2002 decision by the VA to be “arbitrary and capricious,” the VA continues to exclude BWN from presumptive exposure even after further rulemaking in 2016. The VA decision to continue to exclude BWN is under appeal.

In the same year as the *Gray* ruling, Congress passed legislation that expanded benefits coverage to C-123 crews and maintainers, providing hope for Blue Water Veterans.

CURRENT STATE OF BENEFITS

“For the purposes of VA compensation benefits, Veterans who served anywhere in Vietnam between January 9, 1962 and May 7, 1975 are presumed to have been exposed to herbicides, as specified in the Agent Orange Act of 1991. These Veterans do not need to show that there were exposed to Agent Orange or other herbicides in order to get disability compensation for diseases related to Agent Orange exposure.”

–[Department of Veterans Affairs Website](#)

Blue Water Navy Veterans are eligible for benefits under the following conditions:

- Factually supported (i.e. documented) exposure to Agent Orange while aboard their vessel;
- The Veteran set foot in Vietnam or its territorial inland waterways for any reason; or
- A vessel the Veteran served on is listed on the VA ship list during the exposure timeframe established by the VA.
- In or near the Korean demilitarized zone anytime between April 1, 1968 and August 31, 1971



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BLUE WATER NAVY VIETNAM VETERANS ACT OF 2017

Identical legislation championed by Rep. David Valadao (R-CA District 21) (pictured, bottom left) in the House (H.R.299) and Sen. Kirsten Gillibrand (D-NY) (pictured, bottom right) in the Senate (S.422) would extend the same presumption of exposure established in the Agent Orange Act of 1991 for those Veterans who served aboard naval vessels within 12 nautical miles of Vietnam's shore during the war (the Territorial Seas of Vietnam).

- On June 25th, 2018 H.R. 299 passed the house on a roll call vote 382-0. It has been referred to the Senate for consideration.
- S.422 has 52 cosponsors as of October 3rd, 2018. There are 100 members of the Senate.
 - Referred to Senate Veteran's Affairs Committee on February 16th of 2017.



The IMF has sent letters supporting this legislation to both offices, as well as received input on this webinar from their staff. We thank both Senator Gillibrand and Representative Valadao for introducing these bills to expand coverage for Blue Water Navy Vietnam Veterans.

Defining “Offshore”

§ 1116A. Presumptions of service connection for veterans who served offshore of the Republic of Vietnam

(d) Determination Of Offshore.—Notwithstanding any other provision of law, for purposes of this section, the Secretary shall treat a location as being offshore of Vietnam if the location is not more than 12 nautical miles seaward of a line commencing on the southwestern demarcation line of the waters of Vietnam and Cambodia and intersecting the following points:

“Points Geographic Names	Latitude North	Longitude East
At Hon Nhan Island, Tho Chu Archipelago Kien Giang Province	9°15.0'	103°27.0'
At Hon Da Island southeast of Hon Khoai Island Minh Hai Province	8°22.8'	104°52.4'
At Tai Lon Islet, Con Dao Islet in Con Dao-Vung Toa Special Sector	8°37.8'	106°37.5'
At Bong Lai Islet, Con Dao Islet	8°38.9'	106°40.3'
At Bay Canh Islet, Con Dao Islet	8°39.7'	106°42.1'
At Hon Hai Islet (Phu Qui group of islands) Thuan Hai Province	9°58.0'	109°5.0'
At Hon Doi Islet, Thuan Hai Province	12°39.0'	109°28.0'
At Dai Lanh point, Phu Khanh Province	12°53.8'	109°27.2'
At Ong Can Islet, Phu Khanh Province	13°54.0'	109°21.0'
At Ly Son Islet, Nghia Binh Province	15°23.1'	109°9.0'
At Con Co Island, Binh Tri Thien Province	17°10.0'	107°20.6'



Who Pays?

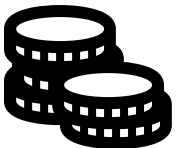
Senate and House members worked together to figure out how to pay for the estimated \$1 billion price tag to cover the Blue Water Navy Vietnam Veterans Act without violating House budget rules against raising a department's mandatory, or entitlement, spending.

The funding fee on initiate-use VA-backed home loans will be increased slightly from 2.15 percent to 2.40 percent of the loan amount for loans with no down payment and first use of the VA guarantee benefit; 3.3 percent to 3.8 percent of the loan amount for loans with no down payment on subsequent use of the loan benefit; 1.50 percent to 1.75 percent of the loan amount for loans with a 5 percent down payment and 1.25 percent to 1.45 percent of the loan amount for loans with a 10 percent down payment.

- The fee would not affect loans to any veteran with 100% VA-rated disabilities but would affect others who previously would not have had to pay the fee for what are known as Jumbo loans; loans that go above the conforming loan limit.

Veterans Service Organizations have found this to be an acceptable increase given the benefit to BWN vets.

However, that funding mechanism may now find itself in jeopardy.



New Challenges From the VA

Recently, the Department of Veterans Affairs has come out against the bill based, again, on a “lack of scientific evidence” to support exposure for BWN veterans.

- On Wednesday, August 1st, only two days following the confirmation of Robert Wilkie as the new VA Secretary, Under Secretary of Benefits Paul R. Lawrence attacked the bill during [a Senate Committee on Veterans' Affairs hearing](#).
- Lawrence testified that there's still no credible scientific evidence to support extending Agent Orange-related benefits to shipboard personnel who never went ashore in Vietnam or patrolled its rivers. Without such evidence, he said, it would be wrong, and would create a disastrous precedent and award VA benefits.

This is despite ample evidence to support exposure, [including a National Center for Biotechnology Information \(NCBI\) report which identified several plausible exposure pathways to Agent Orange](#). Plausible pathways and routes of exposure of naval personnel to Agent Orange include inhalation and dermal contact with aerosols from spraying operations that occurred at or near the coast when naval ships were nearby, contact with marine water, and uses of potable water prepared from distilled marine water.

Distinguished Guest Speaker

PAUL BECKER

REAR ADMIRAL, USN (RET).

PRESIDENT AND CEO AT THE BECKER T3 GROUP LLC



Rear Admiral Paul Becker, USN (Ret) served for 30 years as a Naval Intelligence Officer around the globe in peace, crisis and combat. In 2014, while Director of Intelligence for the Chairman of the Joint Chiefs of Staff in the Pentagon, he was diagnosed with Stage IV Multiple Myeloma.

Paul spent most of 2015 undergoing surgeries, procedures, High Dose Chemo Therapy and a Stem Cell Transplant before returning to uniform. Upon retirement in 2016, Paul founded The Becker T3 Group (T3 = Teamwork, Tone, Tenacity®), a business consultancy and public speaking platform where Paul energizes and inspires corporate and healthcare audiences with military leadership lessons that apply to the private sector and his passionate patient perspective on overcoming extreme adversity. www.TheBeckerT3Group.com

NOW IS THE TIME TO TAKE ACTION

1. Email, write or call your Senator to ask them to cosponsor the Act!
2. Connect with the IMF Advocacy Team to schedule meetings with your Senator. The Advocacy Team can help craft your story, manage your meeting, and even join you on your visit.
3. Share your story with other Veterans. The Veteran community is strong and supports each other. Let others know about these issues and how they can act to support the Blue Water Navy Vietnam Veterans Act of 2017.



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Questions?

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