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Blue Water Navy Vietnam Veterans Act/HR 543- One Pager

Blue Water Navy Vietnam Veterans Act of 2013(BWNVVA), would grant presumptive Agent Orange exposure status to US servicemembers who served in the territorial seas* of Vietnam during the Vietnam War. This would enable eligible veterans to receive Veterans Affairs (VA) benefits if they suffer from any of the diseases the U.S. government has linked to Agent Orange. This measure is supported by the Military Coalition and the American Legion,

Background:

During the Vietnam War, more than 20 million gallons of “Agent Orange” was sprayed to remove jungle foliage. A toxic chemical in the herbicide has been linked to devastating health effects, including non-Hodgkins Lymphoma (NHL), various cancers, Type II Diabetes, and Parkinson’s disease. The Agent Orange Act of 1991 empowered the VA Secretary to declare certain illnesses “presumptive” to exposure to Agent Orange and enabled veterans to receive disability compensation for these related conditions.

Why this legislation is needed:

In 2002, the VA stopped giving benefits to blue water veterans and limited the scope of the Agent Orange Act to only those veterans who could provide proof of “boots on the ground” in Vietnam which encompassed ground forces and the inland rivers. As a result, veterans who served in the waters off the Vietnamese coast were required to file individual claims to restore their benefits, which were then decided on a case-by-case basis. **The VA has denied 32,880 such claims through 2009.** Scientific studies showed a higher rate of cancer and NHL incidence among shipboard veterans than those who fought in country. Studies have also found that there was a plausible pathway for Agent Orange to have discharged to the territorial seas, via rivers and streams. Other studies proved the distillation process, that converted salt water to drinking water, enriched the dioxin and contaminated the shipboard potable water system.

The legislation:

This bill partially restores the presumptive coverage that existed prior to 2002 and lifts the burden from the individual veteran to prove direct exposure to Agent Orange. Proving exposure is nearly impossible due to a lack of record keeping and the inability to know the precise location of dioxins in the air and water runoff. The bill extends the same presumption that currently exists for veterans who served on land and inland waterways. It would also reduce backlogged VA claims for disability compensation from veterans who are suffering from diseases that the U.S. government has linked to Agent Orange.

Important items related to the BWNVVA:

1. **Compensation:** Title 38, United States Code, is amended by inserting “including the territorial seas of such Republic” after “served in the Republic of Vietnam” each place it appears.
2. **Health Care:** Section 1710(e)(4) of such title is amended by inserting “including the territorial seas of such Republic” after “served on active duty in the Republic.”
3. **Effective Date:** The amendments made take effect as of September 25, 1985.

***Territorial Seas** were officially defined by the 1958 Treaty on the Territorial Seas and Contiguous Zone. This agreement stipulates that, every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with the Treaty. Vietnam uses the straight baseline method which measures the baseline from the low water marks of the outermost islands along the coast as marked on large-scale charts officially recognized by the coastal state. The territorial seas and the waters landward of the baseline are considered to be the sovereign territory of the coastal state.

Blue Water Navy Agent Orange

Historical time line for the struggle to restore benefits

1991

- ! Agent Orange Act signed by President George H. W. Bush
- ! Navy veterans who served in the Vietnam Service Medal Area began receiving benefits

1997

- ! VA Office of General Counsel Issues Precedential Opinion Interpreting Agent Orange Act's applicability to those veterans who could demonstrate they had "boots on the ground."

2002

- ! University of Queensland issues report finding that shipboard distillation process enriched effect of Agent Orange dioxin.
- ! VA impalements General Counsel opinion and stops granting benefits to Navy veterans who were exposed offshore.

2003

- ! Australia began granting benefits to those who served within the designated operational area, 185.2 kilometers (approximately 100 nautical miles) from the mainland.

2006

- ! Court of Appeals for Veterans Claims ruled that Navy sailors who served in the near shore waters off Vietnam were entitled to benefits whether or not they set foot on land. *Haas v. Nicholson*, 20 Vet.App. 257 Vet.App.,2006

2008

- ! Court of Appeals for the Federal Circuit in a 2-1 decision overrules the Court of Appeals for Veterans Claims. *Haas v. Peake*, 525 F.3d 1168 (Fed. Cir. 2008).
- ! HR 6562 introduced - died in Committee

2009

- ! IOM's Seventh Biennial Agent Orange Committee reviews and validates the Univ. of Queensland study and recommends Navy veterans not be excluded from the presumption.
- ! HR 2254 introduced - died in Committee despite having 261 co-sponsors.

2010

- ! S 1939 introduced - died in Committee

2011

- ! Institute of Medicine Blue Water Navy Committee replicates and confirms University of Queensland study and finds "plausible pathway" for Agent Orange to have entered the South China Sea via the rivers and streams as well as wind drift.
- ! S 1629 introduced by Senator Gillibrand and Senator L. Graham.
- ! HR 3612 introduced by Congressmen Gibson, Walz, Rehberg and Doggett.