Military-Veterans Advocacy

Written Testimony for the Record in Support of: H.R. 299; H.R. 1328; H.R. 1329; H.R. 1390; H.R. 1564 and, a draft bill entitled "Quicker Veterans Benefits Delivery Act of 2017"

And in Opposition to: HR 105,

Submitted to the United States House of Representatives Disability and Memorial Affairs Subcommittee of the Veterans Affairs Committee, April 5, 2017

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Executive Director

Introduction

Distinguished Sub-Committee Chairman Mike Bost, Ranking Member Elizabeth Esty and other members of the Sub-Committee; thank you for the opportunity to present the Association's views on H.R. 105; HR 299; H.R. 1328; H.R. 1329; H.R. 1390; HR 1564; and, a draft bill entitled "Quicker Veterans Benefits Delivery Act of 2017." This testimony will provide commentary on all of the proposed legislation, but will concentrate on HR 299.

About Military-Veterans Advocacy

Military-Veterans Advocacy Inc. (MVA) is a tax exempt IRC 501[c][3] organization based in Slidell Louisiana that works for the benefit of the armed forces and military veterans. Through litigation, legislation and education, MVA works to advance benefits for those who are serving or have served in the military. In support of this, MVA provides support for various legislation on the State and Federal levels as well as engaging in targeted litigation to assist those who have served.

Along with the Blue Water Navy Vietnam Veterans Association, Inc (BWNVVA) MVA has been the driving force behind the Blue Water Navy Vietnam Veterans Act (HR 299). Working with Members of Congress and United States Senators from across the political spectrum, MVA and BWNVVA provided technical information and support to sponsors who have worked tirelessly to partially restore the benefits stripped from the Blue Water Navy veterans fifteen years ago. Currently HR 299 has 231 co-sponsors.[1] A previous version, with identical language, in the 114th Congress had 335 co-sponsors.

Military-Veterans Advocacy's Executive Director Commander John B. Wells USN (Ret.)

MVA's Executive Director, Commander John B. Wells, USN (Retired) has long been viewed as the technical expert on HR 299. A 22 year veteran of the Navy, Commander Wells served as a Surface Warfare Officer on six different ships, with over ten years at sea. He possessed a mechanical engineering subspecialty, was qualified as a Navigator and for command at sea, and served as the Chief Engineer on several Navy ships. As Chief Engineer, he was directly responsible for the water distillation and distribution system. He is well versed in the science surrounding this bill and is familiar with all aspects of surface ship operations. This includes the hydrological effect of wind, tides and currents.

Since retirement, Commander Wells has become a practicing attorney with an emphasis on military and veterans law. He is counsel on several pending cases concerning the Blue Water Navy and has filed amicus curiae briefs in other cases. He has tried cases in state, federal,

[1] The 238 co-sponsors is as of March 19, 2017. An updated number will be provided during oral testimony.

military and veterans courts as well as other federal administrative tribunals. Since 2010 he has visited virtually every Congressional and Senatorial office to discuss the importance of enacting a bill to partially restore benefits to those veteran who served in the bays, harbors and territorial seas of the Republic of Vietnam. He is also recognized in the veterans community as the subject matter expert on this matter.

Historical Background Surrounding HR 299

In the 1960's and the first part of the 1970's the United States sprayed over 12,000,000 gallons of a chemical laced with 2,3,7,8-Tetrachlorodibenzodioxin (TCDD) and nicknamed Agent Orange over southern Vietnam. This program, code named Operation Ranch Hand, was designed to defoliate areas providing cover to enemy forces. Spraying included coastal areas and the areas around rivers and streams that emptied into the South China Sea. By 1967, studies initiated by the United States government proved that Agent Orange caused cancer and birth defects. Similar incidence of cancer development and birth defects have been documented in members of the United States and Allied armed forces who served in and near Vietnam.

Throughout the war, the United States Navy provided support for combat operations ashore. This included air strikes and close air support, naval gunfire support, electronic intelligence, interdiction of enemy vessels and the insertion of supplies and troops ashore. Almost every such operation was conducted within the territorial seas.

The South China Sea is a fairly shallow body of water and the thirty fathom curve (a fathom is six feet) extends through much of the territorial seas. The gun ships would operate as close to shore as possible. The maximum effective range of the guns required most operations to occur within the territorial seas as documented in the attachment.[2] Often ships would operate in harbors or within the ten fathom curve to maximize their field of fire. The maximum range on shipboard guns (except the Battleship 16 inch turrets) required the ship to operate within the territorial seas in order to support forces ashore.

It was common practice for the ships to anchor while providing gunfire support. Digital computers were not yet in use and the fire control systems used analog computers. By anchoring, the ship's crew was able to achieve a more stable fire control solution, since there was no need to factor in their own ship's course and speed. It was also common for ships to steam up and down the coast at high speeds to respond to call for fire missions, interdict enemy sampans and other operational requirements.

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[2] The red line on the attached chart, Exhibit 1, is known as the base line. Vietnam uses the straight baseline method which intersects the outermost coastal islands. The dashed line is twelve nautical miles from the baseline and represents the territorial seas. The bold line marks the demarcation line for eligibility for the Vietnam Service Medal. Prior to 2002, the VA granted the presumption of exposure to any ship that crossed the bold line. HR-299 will restore the presumption only to a ship that crosses the dashed line.

Small boat transfers were conducted quite close to land. Many replenishments via helicopter took place within the territorial seas. Often these helicopters landed in country for refueling, to disembark passengers or to pick up mail. Small boat or assault craft landings of Marine forces always took place within the territorial seas. Many of these Marines re-embarked, bringing Agent Orange back aboard on themselves and their equipment. Additionally mail, equipment and supplies staged in harbor areas were often sprayed before being transferred to the outlying ships. Embarking personnel would take boats or helicopters to ships operating in the territorial seas. The Agent Orange would adhere to their shoes and clothing as well as to mail bags and other containers. It would then be tracked throughout the ship on the shoes of embarking personnel and the clothing of those handling mail and other supplies brought aboard. Their clothing was washed in a common laundry, contaminating the laundry equipment and the clothing of other sailors.

Flight operations from aircraft carriers often occurred outside of the territorial seas. As an example, Yankee station was outside of the territorial seas of the Republic of Vietnam. Dixie Station, however, was on the border of the territorial seas. Some carriers, especially in the South, entered the territorial seas while launching or recovering aircraft, conducting search and rescue operations and racing to meet disabled planes returning from combat. Aircraft carriers also entered the territorial seas for other operational reasons. Many times these planes flew through clouds of Agent Orange while conducting close air support missions. These planes were then washed down on the flight deck, exposing the flight deck crew to Agent Orange.

Agent Orange Act of 1991.

In 1991, the Congress passed and President George H. W. Bush signed, the Agent Orange Act of 1991, Pub.L. 102–4, Feb. 6, 1991, 105 Stat. 11. This federal law required VA to award benefits to a veteran who manifests a specified disease and who "during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975."

The Agent Orange Act of 1991 further required the Secretary to "take into account reports received by the Secretary from the National Academy of Sciences and all other sound medical and scientific information and analyses available to the Secretary." The Secretary is further required to consider whether the results are statistically significant, are capable of replication, and withstand peer review. The responsibility to prepare a biennial report concerning the health effects of herbicide exposure in Vietnam veterans was delegated to the Institute of Medicine (IOM), a non-profit organization which is chartered by the National Academy of Sciences.

The Agent Orange Act required the Secretary to conduct blood tests on those veterans exposed to Agent Orange. The VA generally ignored this requirement and few blood tests were taken. Unfortunately the half-life deterioration of the dioxin is now below the detection threshold and cannot be identified. While the dioxin has deteriorated, its effects have not. Many of these effects manifested themselves 20-30 years after exposure.

The Department of Veterans Affairs (hereinafter VA) drafted regulations to implement the Agent Orange Act of 1991 and defined "service in the Republic of Vietnam" as "service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam." 38 C.F.R. § 3.307(a)(6)(iii) (1994). This was in contrast to a previous definition which defined "service in Vietnam" as "service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam." 38 C.F.R. § 3.313 (1991). These regulations allowed the presumption of exposure throughout the Vietnam Service Medal area, the dark solid line marked on Exhibit 1. Under this definition, a ballistic missile submarine was covered as were the aircraft carriers on Yankee Station and submarines conducting operations in the Gulf of Tonkin in an area off the coast where no Agent Orange was sprayed. These ships would not be covered under HR 299.

In 1997 the VA General Counsel issued a precedential opinion excluding service members who served offshore but not within the land borders of Vietnam. The opinion construed the phrase "served in the Republic of Vietnam" as defined in 38 U.S.C. § 101(29)(A) not to apply to service members whose service was on ships and who did not serve within the borders of the Republic of Vietnam during a portion of the "Vietnam era." The opinion stated that the definition of the phrase "service in the Republic of Vietnam" in the Agent Orange regulation, 38 C.F.R. § 3.307(a)(6)(iii), "requires that an individual actually have been present within the boundaries of the Republic to be considered to have served there," and that for purposes of both the Agent Orange regulation and section 101(29)(A), service "in the Republic of Vietnam" does not include service on ships that traversed the waters offshore of Vietnam absent the service member's presence at some point on the landmass of Vietnam." [3]

After lying dormant for a few years, this General Counsel's opinion was incorporated into a policy change that was published in the Federal Register during the last days of the Clinton Administration.[4] The final rule was adopted in Federal Register in May of that year.[5] The VA recognized the exposure presumption for the "inland" waterways but not for offshore waters or other locations.

Historically the VA's Adjudication guidance, the M21-1 Manual, allowed the exposure presumption to be extended to all veterans who had received the Vietnam service medal, in the absence of "contradictory evidence." In a February 2002 revision to the M21-1 Manual, the VA incorporated the VA General Counsel Opinion and the May 2001 final rule and required a showing that the veteran has set foot on the land or entered an internal river or stream. This "boots on the ground" requirement is in effect today.

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[3] VA Op. Gen. Counsel Prec. 27-97 (1997).

[4] 66 Fed.Reg. 2376 (January 11, 2001).

[5] 66 Fed. Reg. 23166.

One exception to this rule deals with Non-Hodgkins Lymphoma (NHL). A punctuation difference in the regulation requires the inclusion of Blue Water Navy veterans. The VA General Counsel has ruled that all persons in the Center for Disease Control's (CDC) Selected Cancers Study, including Blue Water Navy (BWN) veterans, were presumed to be included in the definition of "duty or visitation in Vietnam."[6] The Secretary has never explained why Agent Orange exposure caused NHL in BWN veterans but that it did not cause the other diseases associated with the dioxin. This selective application is inexplicable.

Hydrological Effect

The Agent Orange spray was mixed with petroleum. The mixture washed into the rivers and streams and discharged into the South China Sea. The riverbanks were sprayed continuously resulting in direct contamination of the rivers. The dirt and silt that washed into the river was clearly seen exiting the rivers and entering the sea. This is called a discharge "plume" and in the Mekong River it is considerable. Although the Mekong has a smaller drainage area than other large rivers, it has approximately 85% of the sediment load of the Mississippi. In two weeks, the fresh water of the Mekong will travel several hundred kilometers.[7] Notably, Agent Orange dioxin dumped in the Passaic River in New Jersey made its way off the east coast of the United States and was found in fish over one hundred nautical miles from shore.[8]

By coincidence, the baseline and territorial seas extend further from the mainland off the Mekong River. At its widest point off the Mekong, the territorial seas extend to 90 nautical miles from the mainland. This was due to the location of the barrier islands owned by Vietnam. Given the more pronounced effect of the Mekong plume, however, the broader area off the Mekong Delta is appropriate. The force of the water in this area is greater than the river discharge in other parts of the country.

Eventually, the Agent Orange/petroleum mixture would emulsify and fall to the seabed. Evidence of Agent Orange impingement was found in the sea bed and coral of Nha Trang Harbor. This was determined by a study of coral deterioration in the harbor.[9] Here the

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[6] VAOPGCPREC 7-93, 1993.

[7] Chen, Liu et. al, *Signature of the Mekong River plume in the western South China, Sea revealed by radium isotopes,* JOURNAL OF GEOPHYSICAL RESEARCH, Vol. 115, (Dec. 2010).

[8] Belton, et. al, 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and 2,3,7,8-Tetrachlorodibenzo-p-Furan (TCDF), In Blue Crabs and American Lobsters from the New York Bight, New Jersey Department of Environmental Protection (November 12, 1988).

[9] *Pavlov, et, al, Present-Day State of Coral Reefs of Nha Trang Bay (Southern Vietnam) and Possible Reasons for the Disturbance of Habitats of Scleractinian Corals,* RUSSIAN JOURNAL OF MARINE BIOLOGY, Vol. 30, No. 1 (2004).

Vietnamese government contracted with Dr. Pavlov[10] and his team to ascertain why the coral in the Nha Trang area was dying. Their conclusion was that the coral was dying from the effect of Agent Orange. The presence of the dioxin was confirmed

Table 1 from this report (reproduced herein as Exhibit 2) shows the stations where the damage was verified in the coral as well as the stations where bottom sediment samples revealed the presence of the dioxin. The cross hatched section in the upper left hand quadrant shows the limit of Agent Orange spraying, encompassing part of the Kay River. The first station, station 50, is located in the Kay River seaward of the sprayed area. Bottom sediment samples, as reflected in Table 2 (reproduced as Exhibit 3) show a significant toxic effect in the column entitled 1-TEQ, ng/kg. The stations in a direct path from Transects B and C, as shown in Table 1, have more significant toxic effect than other areas. Transects A and D are in the discharge paths of rivers that did not receive direct spraying. While the stations along these Transects do show lower levels of toxic exposure. This is more appropriate for rainwater runoff from sprayed areas rather than discharge from the Kay River which received direct spraying. While all four Transects showed definite Agent Orange infiltration, the exposure was greater along the discharge plume of the Kay River.

The Pavlov study confirms the premise advanced by Military-Veterans Advocacy and hydrologists familiar with the Vietnamese River systems that the Agent Orange, which was mixed with petroleum, floated out to the harbors and the South China Sea from areas that were directly sprayed as well as rain water runoff into the inland waterways.

Notably, the harbors and bays of Vietnam were not "deep water" ports, as depicted by the VA, but shallow water areas. Da Nang Harbor currently has a depth at the anchorage of 31-35 feet (http://www.worldportsource.com/ports/portCall/VNM_Da_Nang_Port_1457.php (last visited August 16, 2015), although anecdotal information indicates it was dredged to 42 feet during the Vietnam War. The deepest point of Nha Trang Harbor is 32.7 meters or 107 feet. Most of the area is shallower. Destroyer sized ships normally drew 15-18 feet (depending on loadout) and could safely anchor up to a depth of 180-200 feet. These ships would churn up the sea bed when entering and leaving the harbor and again when anchoring or weighing anchor. The emulsified Agent Orange would continue to be stirred up and would rise to the surface.

During the Vietnam War, the coastline, especially in the harbors and within the thirty fathom curve, was a busy place with military and civilian shipping constantly entering and leaving the area in support of the war effort. Whenever ships anchored, the anchoring evolution would disturb the shallow seabed and churn up the bottom. Weighing anchor actually pulled up a small portion of the bottom. The propeller cavitation from ships traveling at high speeds, especially within the ten fathom curve, impinged on the sea bottom. The wakes left by small

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[10] Dr. Pavlov was affiliated with the Institute of Ecology and Problems of Evolution, Russian Academy of Sciences, Biological Department, Moscow State University and Russian–Vietnamese Tropical Center, Hanoi, Vietnam.

boats traveling from ships to the shore would also churn up the sea bottom. This caused the Agent Orange to constantly rise to the surface. The contaminated water was ingested into the ship's evaporation distillation system which was used to produce water for the boilers and potable drinking water. Navy ships within the South China Sea were constantly steaming through a sea of Agent Orange molecules.

The Australian Factor and the Distillation Process

In August of 1998 Dr. Keith Horsley of the Australian Department of Veterans Affairs met Dr. Jochen Mueller of the University of Queensland's National Research Centre for Environmental Toxicology (hereinafter NRCET) in Stockholm at the "Dioxin 1998" conference. Horsley shared a disturbing trend with Mueller. Australian VA studies showed a significant increase in Agent Orange related cancer incidence for sailors serving offshore over those who fought ashore. Based on that meeting, the Australian Department of Veterans Affairs commissioned NRCET to determine the cause of the elevated cancer incidence in Navy veterans.

In 2002, as the American Department of Veterans Affairs (VA) was beginning to deny the presumption of exposure to the United States Navy veterans, NRCET published the result of their study.[11] Their report noted that ships in the near shore marine waters collected water that was contaminated with the runoff from areas sprayed with Agent Orange. The evaporation distillation plants aboard the ships co-distilled the dioxin and actually enriched its effects. As a result of this study, the Australian government began granting benefits to those who had served in an area within 185.2 kilometers (roughly 100 nautical miles) from the mainland of Vietnam.

Institute of Medicine (IOM) Reports

In June of 2008, Blue Water Navy representatives presented to the IOM's Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides (Seventh Biennial Update) in San Antonio, Texas. That Committee report[12] accepted the proposition that veterans who served on ships off the coast of the Republic of Vietnam were exposed to Agent Orange and recommended that they **not be excluded** from the presumption of exposure. The Committee reviewed the Australian distillation report and confirmed its findings based on Henry's Law. The VA did not accept these recommendations. Instead then Secretary Shinseki ordered another IOM study. On May 3, 2010, Blue Water Navy representatives testified before the Institute of Medicine's Board on the Health of Special Populations in relation to the project "Blue Water

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[11] Mueller, J; Gaus, C, et. al. *Examination of The Potential Exposure of Royal Australian Navy (RAN) Personnel to Polychlorinated Dibenzodioxins And Polychlorinated Dibenzofurans Via Drinking Water* (2002).

[12] IOM (Institute of Medicine). 2009. *Veterans and Agent Orange: Update 2008.* Washington, DC: The National Academies Press.

Navy Vietnam Veterans and Agent Orange Exposure."[13] They concluded: (1) There was a plausible pathway for some amount of Agent Orange to have reached the South China Sea through drainage from the rivers and streams of South Vietnam as well as wind drift, (2) The distillation plants aboard ships at the time which converted salt water to potable water did not remove the Agent Orange dioxin in the distillation process and enriched it by a factor of ten, (3) Based on the lack of firm scientific data and the four decade passage of time, they could not specifically state that Agent Orange was present in the South China sea in the 1960's and 1970's, (4) There was no more or less evidence to support its presence off the coast than there was to support its presence on land or in the internal waterways and (5) Regarding the decision to extend the presumption of exposure "given the lack of measurements taken during the war and the almost 40 years since the war, this will never be a matter of science but instead a matter of policy." Notably this report did not contradict the findings of the Seventh Biennial report that the Blue Water Navy personnel should not be excluded from the presumption of exposure.

The IOM's Eighth Biennial Update recognized that "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."[14] The Ninth Biennial Update stated that " 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, particularly in heavily sprayed areas that experienced frequent flooding." [15]

Harbor Water Barges

In April of 2016, Military-Veteran Advocacy bought to the attention of former Chairman Jeff Miller the use of water barges in Vietnamese harbors, specifically Da Nang. These water barges furnished potable water, contaminated with the Agent Orange dioxin, to ships at anchor.

Most Navy ships had limited potable water reserves. The potable water was used for drinking, laundry, cooking, cleaning and hygiene for the crew and other embarked personnel. When anchored in the harbors, ships tended to distill mainly to reserve feed water, used for the boilers,[16] because of sanitation issues. Solid waste permeated the harbor both from the ships

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[13] IOM (Institute of Medicine). 2011. *Blue Water Navy Vietnam Veterans and Agent Orange Exposure.* Washington, DC: The National Academies Press.

[14] IOM (Institute of Medicine). 2012. *Veterans and Agent Orange: Update 2010.* Washington, DC: The National Academies Press.

[15] IOM (Institute of Medicine). 2014. *Veterans and Agent Orange: Update 2012.* Washington, DC: The National Academies Press.

[16] Since the same intake distillation and discharge system was used for reserve feed and potable water distillation, the entire system was contemned by Agent Orange dioxin discharged

themselves, the shore establishment and indigenous residents of the area. Accordingly distillation to potable water was discouraged. As a result, reserve potable water levels often fell below acceptable limits. This required periodic replenishment from military and commercial potable water barges.

At least three self-propelled water barges YW 101, 126 and 128 were deployed to Vietnam.[17] These barges were used frequently in Qui Nhon and Da Nang harbors. Their efforts were supplemented by commercial water barges.

In their monthly report, Commander Naval Forces Vietnam noted millions of gallons of potable water being delivered to anchored ships in any given month. These report are available from the Naval Historical command.[18] This water was obtained from an open air reservoir on "Monkey Mountain" which overlooked Da Nang Harbor. The use of water from Monkey Mountain has been verified by Mary Ellen McCarthy, the former staff director of the Senate Veterans Committee. Notably this water was not only provided to anchored ships, but to ships moored to the piers.

The entire area was frequently sprayed with Agent Orange because there was a communications facility and artillery spotters located on the mountain. The intent was to deny cover to enemy forces who might attack those facilities or use the mountain as a mortar location.

Law of the Sea

Despite VA protestations to the contrary, the exclusion of the Blue Water Navy veterans from the presumption of exposure was never about science. The decision stems from an irrational, arbitrary and capricious finding of an incompetent General Counsel's office. The basis behind this deadly determination was an improper statutory interpretation, made in defiance of accepted principles concerning the law of the sea as well as international treaties signed and ratified by the United States. In defense of the General Counsel's office, Military-Veterans Advocacy believes the initial action was taken because of ignorance rather than maliciousness. Their unconscionable defense of a bad decision, however, has been nothing sort of abhorrent. The fact that an agency of the United States government would condemn tens of thousands of

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into the harbors via the rivers. Emulsified Agent Orange that sank to the sea bed was disturbed and rose to the surface by the cavitation effects of ships entering and leaving the harbor and by the anchoring evolutions.

[17] See: http://www.navsource.org/archives/14/17idx.htm

[18] See: http://oai.dtic.mil/oai/oai?verb=getRecord&metadataPrefix=html&identifier=ADA953613 and http://www.history.navy.mil/content/dam/nhhc/research/archives/commander-naval-forces-vietnam/monthly-summaries-1967/July1967.pdf

veterans to an early death to cover-up their error is despicable.

The Agent Orange Act of 1991 provides that:

> ... [A] veteran who, *during active military, naval, or air service in the Republic of Vietnam* during the period beginning on January 9,1962, and ending on May 7,1975, and has ...[an enumerated disease] shall be presumed to have been exposed during such service to an herbicide agent containing dioxin ... unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during service.

38 U.S.C. § 1116(a)(3). (Emphasis added).

Vietnam claims a 12 mile territorial sea. The United States has consistently recognized Vietnamese sovereignty over the territorial seas of Vietnam. This recognition was expressly incorporated into the 1954 Geneva Accords Art. 4 which established the Republic of Vietnam.[19] It was confirmed again in Art. 1 of the 1973 Paris Peace Treaty which ended the Vietnam War. [20] During the war, the United States recognized the Vietnamese 12 limit.[21]

Vietnam claims as internal or inland waters the seas landward side of the baseline.[22] Additionally, bays such as Da Nang Harbor are considered part of inland waters and under international law are the sovereign territory of the nation.[23]

The Secretary has recognized the presumption of exposure for those who served onboard ships who were in "inland" waters. The VA definition only includes inland rivers and does not cover the bays and harbors. Recently the Court of Appeals for Veterans Claims has rejected the VA's exclusion of Da Nang Harbor from the definition of inland waters as irrational and not

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[19] https://www.mtholyoke.edu/acad/intrel/genevacc.htm (last visited June 6, 2014).

[20] http://www.upa.pdx.edu/IMS/currentprojects/TAHv3/Content/PDFs/Paris_Peace_Accord_1973.pdf (last visited June 6, 2014).

[21] *The Joint Chiefs of Staff and the War in Vietnam 1960-1968,* Part II which can be found at dtic.mil/doctrine/.../jcsvietnam_pt2.pdf at 358.

[22] United States Department of State *Bureau* of *Intelligence and Research, Limits in the Seas No. 99* Straight Baselines: Vietnam, (1983).

[23] Convention on the Territorial Sea and Contiguous Zone, [1958] 15 U.S.T. 1607, T.I.A.S. No. 5639.

entitled to deference.[24] In this case, the Court reviewed the case of a veteran whose ship was anchored in Da Nang Harbor but who did not set foot on land. As shown in Exhibit 4, Da Nang Harbor is surrounded on three sides by land and is considered inland waters under international law. The court required the VA to rationally specify what they consider to be inland waters. Instead in February of 2016 they doubled down on the exclusion without explanation. Military-Veterans Advocacy filed suit under the Administrative Procedures Act and 38 U.S.C. § 502 to invalidate that regulation. Briefing is complete and the parties are scheduled for oral argument on May 5, 2017.

Attempt to Search for Dioxin Residue on Inactive Ships

The staff of this sub-committee has sought to have the Navy investigate and test for the dioxin on ships that formerly served in Vietnamese waters. In May of 2016, Military-Veterans Advocacy contacted former Chairman Miller to discuss this matter. A follow up meeting in September of 2016 discussed the futility of this attempt.

There is very little likelihood that any residue is present aboard any inactive ship. This is very different from the C-123 aircraft that were stored in the dry heat environment of the Arizona desert. Ships remain in the water which is very susceptible to temperature changes. These temperature changes cause condensation inside of the hull, especially in the engineering spaces which are located below the waterline. The humidity caused by this environment will have a completely different effect than the dry arid environment had on the tanks in the C-123.

More importantly, the water distribution system, steam system and auxiliaries would have been continuously flushed after leaving Vietnamese waters. Ships continued to distill water for months, years and sometimes decades before they were decommissioned. The constant flow of water would have eventually removed the dioxin. Additionally, the internals of the distillation plant were removed on an annual basis for descaling and in later years sand blasting. The internal shell of the evaporator distillation equipment would be hand scraped to remove the scale that accumulated during operations. Boiler tubes were mechanically cleaned every 1800 hours of operation and in later years were water jetted with several thousand pounds of pressure. This was critical to maintaining purity and efficiency as the scale affected heat transfer. In boilers, the scale buildup could lead to catastrophe boiler tube failure.

These ships were on a five year overhaul cycle. The water distribution piping was located in the bilges and often suffered corrosion damage due to immersion in water, including salt water. It was normally inspected and if necessary replaced during the overhaul cycle. Distillation pumps were inspected quarterly and often refurbished on an annual basis. The water tanks were drained and cleaned to remove moisture. The tanks were inspected and if necessary the interiors were repainted. Most major equipment would be refurbished during that overhaul.

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[24] *Gray v. McDonald*, No. 13 3339, 2015 WL 1843053,(Vet. App. Apr. 23, 2015).

Even more important, the Committee staff has not been able to assure Military-Veterans Advocacy that the ships under consideration, three aircraft carriers, even served in the territorial seas. If they did not, the relevance of this test is below any threshold of reason. Nor were these ships inactivated immediately after return. They appear to have had subsequent operations and deployments prior to decommissioning.

A better study would be to take bottom sediment samples in the various Vietnamese harbors and in the territorial seas out to the 30 fathom curve. That would of course require diplomatic clearances and it might spur a request for significant reparations from the Vietnamese government. It would also call into question the safety of Vietnamese seafood imported into the United States. Unlike the ship test, the bottom sediment examination would reveal tangible proof of the presence of dioxin.

The ship test is an attempt to prove a negative. As a naval engineer with a mechanical engineering subspecialty, I can confirm that under these circumstances no residue will be found. This is an exercise in futility and a waste of governmental resources. It will have a predictable negative result which could be used by the VA or other opponents of this bill as a basis to question the proven science.

Cost of HR 299

In October of 2012, the Congressional Budget Office provided a preliminary estimate that the Blue Water Navy Vietnam Veterans Act would cost $2.74 billion over ten years. After meeting with Military-Veterans Advocacy, CBO re-scored the bill at $1.104 billion over ten years. (See preliminary score attached as Exhibit 5). Military-Veterans Advocacy estimates that approximately 90,000 veterans would be affected by this bill.

Due to several unknowns, the CBO really cannot accurately score this bill and their estimate appears to be significantly higher than the actual cost. As a threshold matter, additional ships have been confirmed to have entered the Vietnamese river system. Once a ship's position in a river has been substantiated, everyone onboard on that date is covered by the presumption of exposure. MVA estimates another 10% of the crews actually set foot in Vietnam. This includes crew members who went ashore for conferences, to pick up supplies, equipment or mail and those who piloted and crewed the boats and/or the helicopters that operated between the ships and shore. Additionally, some personnel went ashore to see the doctor, the dentist, the chaplain or the lawyer. They called home. They shopped at the PX and departed on emergency leave or permanent change of station orders. Additionally, men reporting to the ship would often transit though Vietnam. Finally, a number of ships that were at anchorage would send a portion of the crew ashore for beach parties or liberty. All of those veterans are covered under existing law if they can prove that they actually set foot in Vietnam.

Some Blue Water Navy veterans, especially those who served for 20-30 years, manifested symptoms while on active duty. They are automatically service-connected for those diseases and

should not be considered in computing the cost of the bill.

There will be a dollar for dollar offset for Navy veterans currently receiving a non-service connected pension. Additionally, under concurrent receipt laws, some veterans who are also military retirees will have a dollar for dollar offset due to waiver of their Title 10 pension (less federal tax liability).

Additionally, the CBO preliminary estimate shows a slow up-ramp in dollars after the third year. Due to the accelerated death rate among Agent Orange victims, the number of veterans covered will be decreasing at a rate that outstrips inflation. While some money will have to be paid to survivors under the Dependent's Indemnity Compensation program, that is a mere 40% of the veteran's benefit.

Additionally, as most Blue Water Navy veterans are in their 60's they are Medicare eligible or will become Medicare eligible during the ten year cost cycle. In a previous report, the CBO has compared the cost of Medicare treatment with treatment at a VA facility.[25] One of the key findings of this report was that private sector Medicare services would have cost about 21 percent more than services at a VA facility. When dealing with retirees, the cost would be greater since Medicare only provides coverage for 80% of the cost. Tricare for Life provides an additional 20% coverage for military retirees. Notably this estimate was issued prior to the Choice program so the savings may be less dramatic. Additionally, CBO admits that they made their decision based on old data because the VA failed to provide updated information. Still some savings in discretionary spending should be realized if HR 299 is adopted.

While HR 299 will require an expenditure of funds, many of the costs will be recoverable. The Blue Water Navy Vietnam Veteran Association analysis indicates a probable ten year cost of $800 million. MVA concurs with that estimate.

It is possible that the cost picture will change dramatically. I have a meeting with Secretary Shulkin on April 21st concerning a rulemaking request to include both Da Nang and Nha Trang harbors. We also have our pending court case concerning the exclusion of all bays and harbors. If Secretary Shulkin grants our request or the court finds in our favor, tens of thousands of additional veterans would be covered under existing law. That will require the score to be revised downward. MVA estimates a ten year cost of between $100 and $150 million if all of the bays and harbors are covered.

MVA has proposed offsets in the past. We identified excessive mandatory spending in the VA Home loan program during the 113th Congress. Unfortunately, that money was used to partially fund the Veterans Access, Choice and Accountability Act. In the 114th Congress, MVA

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[25] Congressional Budget Office, *Comparing the Costs of the Veterans' Health Care System With Private-Sector Costs* (December 2014)

proposed the use of "round downs" to fund the bill. Our information was that "round downs" would generate $1.8 billion over ten years. Senator Sanders refused to go along with the "round downs." Then we worked with the sponsors and the Senate Judiciary Committee to propose an increase in student visa fees. Senator Leahy chose to put the interests of foreign students ahead of veterans and withheld his consent.

We believe offsets are a Congressional responsibility rather than a proponent's responsibility, but we have tried to do our part to work within the rules. We are at a loss to find an offset acceptable to all 100 Senators. While a favorable decision from Secretary Shulkin or the federal court will reduce the problem, the requirement to produce an offset for mandatory benefits, earned as a result of wartime service, should be exempt from the offset requirements of the Pay As You Go Act of 2010 (PAYGO).

The Blue Water Navy is not alone in being sacrificed on the altar of PAYGO. Other Agent Orange exposures have taken place in Guam, Thailand, Laos, Cambodia, Korea, Panama, Okinawa and other areas. Additionally, other toxic exposures have been identified including PCBs, mustard gas, asbestos, radiation, burn pits, Fort McCllellan, depleted uranium and others have been negatively affected the health of veterans who were exposed while on active duty. Military-Veterans Advocacy estimates that the cost of benefits for all toxic exposures would be $20-25 billion over ten years. On May 20, 2017, victims of toxic exposure will gather on the National Mall to call attention to their plight in "Operation Stand Together." We hope that the Sub-Committee will send a representative.

In today's budgetary world, Congress must decide whether they are willing to pay for service connected toxic exposure. One of the reasons why service connected benefits are necessary is that military personnel are not allowed to sue the government or its contractors for injuries caused by negligence that are incident to service.[26] One of the basis for the adoption of this policy, known as the *Feres* doctrine, was the promise of generous disability benefits available to veterans for their service connected illnesses and disability. A failure to address these toxic exposures may result in a request for a judicial reconsideration of the *Feres* doctrine.

President Trump has stated repeatedly that he wants to address the needs of the veterans community. In order to achieve this praiseworthy goal, a funding source must be identified. Congress has been stymied in adopting piecemeal approaches to offsets. In the case of the VA, there are no significant mandatory spending funds available without cutting benefits. Military-Veterans Advocacy proposes the establishment of a $10.00 annual "Freedom Fee" for all personal and cooperate tax returns except for those tax exempt entities organized under § 501(c)(3) of the Internal Revenue Code. This should generate $2.5 billion per year for ten years. The fund must be dedicated to fund benefits for veterans exposed to toxic substances and to conduct research into the effect of those exposures. We recommend that the diversion of any funds raised

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[26] *Feres v. United States*, 340 U.S. 135, 71 S. Ct. 153, 95 L. Ed. (1950).

by the "Freedom Fee" be prohibited absent a Presidential finding of necessity and the 2/3 vote of both Houses of Congress.

Partial Coverage

Military-Veterans Advocacy is aware of some movement to provide partial relief. The suggestion often heard is to provide medical care but not compensation. While we understand that there may be a need for segmented coverage we recommend a different approach. Providing medical coverage only would cost $217 million of discretionary spending. It will not address the mandatory spending. While this would certainly provide some minor relief, it would be somewhat illusionary. Most of our Blue Water Navy veterans are Medicare eligible. While it is true Medicare only covers 80% of the costs, many veterans have supplemental plans. Additionally, as stated earlier, CBO has also estimated a higher cost for Medicare reimbursement than treatment at the VA hospitals. Perhaps more important, many of our veterans are below the income threshold for nonservice connected treatment. They are receiving the treatment already, albeit at a lower priority.

More importantly, the Blue Water Navy veterans have been treated as second class veterans for the past fifteen years. While any assistance is appreciated, Military-Veterans Advocacy urges the Congress to recognize these veterans as deserving the same level of respect as their ground force and brown water brothers and sisters.

Although Military-Veterans Advocacy does not support the concept of partial coverage, if financial constraints require such a segmented approach, we recommend it be done on a geographical basis. Nha Trang Harbor should be the first area covered since we know that toxic levels of Agent Orange were present there 20 years after the war ended. The next priority would be ships anchored in harbors when a water barge using contaminated water can be confirmed to have come alongside. The third priority should be the remainder of ships anchored in Da Nang Harbor because of the dumping by the C-123s as they approached the airfield and the numerous canals and ditches that ran from the airport into the harbor. The fourth priority should be the remaining bays and harbors. The next priority should be the remainder of the territorial seas.

Any decision on partial coverage should be held in abeyance until such time as Secretary Shulkin acts on our rulemaking request and the court has ruled on our pending court action. Either or both of these activities could significantly affect the scope of the coverage and its associated cost.

Common VA Misrepresentations

The VA has consistently opposed the expansion of the presumption of exposure. Whether it is a reluctance to admit an error or other bureaucratic arrogance is unknown, but they have invariably misrepresented the facts surrounding this issue. They have even come before

Congress and fabricated their testimony. As a result, tens of thousands of veterans have died without the compensation and care that they have earned. Additionally, the spouses of veterans were forced to leave the work force early to nurse sick husbands suffering from the ravages of Agent Orange. Many of these survivors have been left destitute. Since it may not be possible to address all of the VA disingenuous confabulations, I have repeated some of their most common fallacies.

Some common misrepresentations are as follows:

Misrepresentation: The Australian distillation study was never peer reviewed.
MVA Comment: The report was presented for review at the 21st International Symposium on Halogenated Environmental Organic Pollutants and POPs and is published in the associated peer reviewed conference proceedings: Müller, J.F., Gaus, C., Bundred, K., Alberts, V., Moore, M.R., Horsley, K., 2001. It was also reviewed and confirmed by two separate committees of the IOM. Its findings were accepted by the Australian government.

Misrepresentation: There is no evidence that the evaporation distillation process used by the Australians was the same as used on United States ships.
MVA Comment: All steam ships used a similar system which remained in place until the 1990's. In addition many of the Australian gun ships were the United States *Charles F. Adams* class and were built in the United States. Both the MVA Executive Director and another experienced Navy Chief Engineer have reviewed the Australian report. They concluded the distillation systems therein were the same as used by U. S. ships.

Misrepresentation: There is no evidence that Navy ships distilled potable water.
MVA Comment: Ships carried a reserve of potable water but it was normally replenished by distillation daily or every other day. A Destroyer sized ship carried less than 20,000 gallons for a crew size between 275 and 300 men. The water was used for cooking, cleaning, laundry, showering and drinking. As Vietnam is in the tropics, significant hydration was necessary. In addition, the warmer sea injection temperature below the 17th parallel resulted in less efficient water production. Water hours, where showers were limited or banned, was common during tropical deployments. Water was constantly being distilled to meet the requirements for boiler feed water and potable water.

Misrepresentation: The Australian study monitored the reverse osmosis system rather than the evaporation distillation system used on U. S. ships.
MVA Comment: The only time that the reverse osmosis system was used in the Australian study was to purify the baseline sample prior to adding the solids and sediments consistent with the estuarine waters of Vietnam. The actual distillation process, as confirmed above, was the same distillation system used by U. S. Ships.

Misrepresentation: The IOM found more pathways of Agent Orange exposure for land

based veterans than those at sea.
MVA Comment: Technically this is true but irrelevant. The IOM noted that discharges from rivers and steams was a pathway unique to the Blue Water Navy and that it was one of the plausible pathways of exposure. The number of possible pathways is not determinative. What is conclusive is that pathways of exposure existed.

Misrepresentation: The IOM could not quantify any Agent Orange in the water.
MVA Comment: This again is a red herring. Any amount of exposure can do damage to the human body. The IOM also found that the evaporation distillation process enriched the dioxin by a factor of ten. This is consistent with Australian studies showing a higher cancer incidence among Navy veterans and a Center for Disease Control study showing a higher incidence of Non-Hodgkins Lymphoma among Navy veterans. Additionally, measurements of the dioxin found in Nha Trang Harbor have been repeatedly provided to the VA. The VA has ignored this evidence.

Misrepresentation: Ships operating hundreds of miles off shore who were not exposed will be given the presumption of exposure.
MVA Comment: Not true. This bill applies only to the territorial seas which at their widest point off the Mekong extends out to 90 nautical miles from the mainland. In the central and northern part of the Republic of Vietnam, the territorial seas would only extend 20-30 nautical miles from the mainland.

Misrepresentation: Submarines would come into the area to obtain the Vietnam Service Medal for their crews and would be eligible for the presumption.
MVA Comment: One ballistic missile submarine the *USS Tecumseh*, SSBN 628 did enter the VSM area for that purpose but there is no indication that they entered the territorial seas. Submarines operating off of Haiphong or near Hainan Island would not have been within the territorial seas and are not covered by HR-299.

Misrepresentation: No Agent Orange was sprayed over water.
MVA Comment: Not true. MVA is in possession of statements from witnesses that ships anchored in Da Nang Harbor were inadvertently sprayed as the "Ranch Hand" planes made their approach to the airfield. Additionally, there are anecdotal reports of defective spray nozzles resulting in spray over the ships at anchor or operating in the South China Sea. Finally, the IOM recognized that the offsetting winds would blow some spray intended for the landmass over water.

Misrepresentation: Navy regulations prevented ships from distilling water within ten miles of land.
MVA Comment: This statement was taken out of context from a preventive medicine manual and was not a firm requirement. Ships were encouraged to not distill potable water near land because of the possibility of bacteriological contamination. Commanding Officers could allow potable water to be distilled close to land and often delegated that

authority to the Chief Engineer. The IOM noted that the recommendation contained in the manual was widely ignored. More importantly, the recommendations in the manual did not apply to the distillation of feed water for use in the boilers. Since the same equipment was used for potable water, distillation to feed water would contaminate the entire system down to the final discharge manifold. Additionally, feed water used in auxiliary systems was discharged to the bilges via low pressure drains. Crew members would also be exposed to Agent Orange residue while cleaning and inspecting the watersides of boilers and the steam sides of condensers as well as other equipment. Additionally, when potable water was not distilled, water barges were used to furnish contaminated water to anchored ships.

Misrepresentation: The IOM confirmed that there was no likelihood of exposure to herbicides in Da Nang Harbor.
MVA Comment: The court in *Gray v. McDonald*, took the VA to task for this statement noting that this was not the conclusion of the IOM.

Misrepresentation: There is no evidence that the dioxin entered the bays, harbors and territorial seas.
MVA Comment: This is simply not true. Toxic levels were found in Nha Trang Harbor. Additionally, numerous drainage ditches and canals ran from the Da Nang airfield, where the planes were washed down and the spray tanks washed out, to the river and harbor. There are also anecdotal stories of the C-123s dumping excess spray as they approached the air field. That flight path often came over the harbor. Given the offsetting winds, it is probable that some portion of the spray was blown out to the harbor and the seas beyond.

Conclusion concerning HR 299

MVA urges the adoption of HR 299. It will restore the earned benefits to tens of thousands of Navy veterans that were taken from them over a decade ago. This bill is supported by virtually all veterans organizations including the American Legion, The Military Coalition, Veterans of Foreign Wars, Vietnam Veterans of America, Reserve Officers Association, Fleet Reserve Association, Military Officers Association of America, Association of the U. S. Navy and other groups. Enactment of this legislation is overdue and Military-Veterans Advocacy most strongly supports its passage.

HR 105

While Military-Veterans Advocacy supports the concept that veterans should be reimbursed for financial fraud on the part of a fiduciary, we do not believe HR 105 is the proper avenue. This bill would effectively make the Department an insurer for the fiduciaries. While the pertinent statute does call for recoupment, such an effort may be ineffective and result in an unnecessary burden on the Secretary. Collection will require the allocation of money and the expenditure of significant employee time to collect what may be a small debt.

A better approach is to require the fiduciary to obtain a bond in the amount of benefits to be awarded annually. The Secretary can promulgate a listing of approved bond companies and update that listing periodically. The Secretary can also pay the cost of the bond from the fee claimed by each fiduciary. This bond should also apply to cases where the Secretary was negligent in investigating allegations of fraud. The application of the bond to the latter situation will recover money that would otherwise be expended pursuant to 38 U.S.C. § 6107.

HR 1328

Military-Veterans Advocacy supports HR 1328. This bill will allow an automatic increase in COLA based on the Social Security Act. Enactment of this bill will streamline the process and eliminate the need for a separate bill each year.

HR 1329

Military-Veterans Advocacy concurs with the cost of living increase.

HR 1390

Military-Veterans Advocacy supports this bill. The cost is minimal and is outweighed by assuming the financial burden that would otherwise be placed on the veteran's survivors.

HR 1564

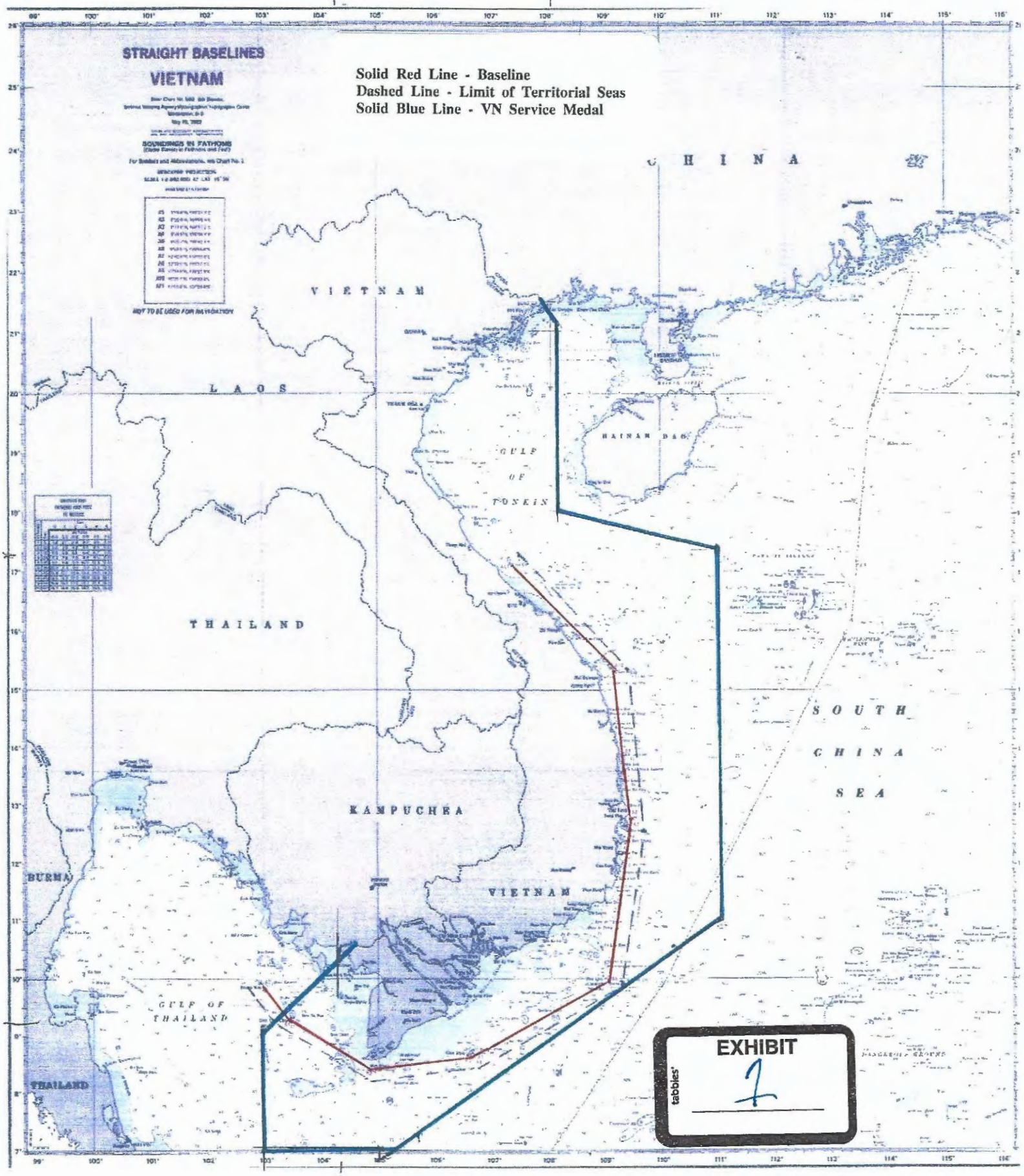
Military-Veterans Advocacy supports this bill.

Quicker Veterans Benefits Delivery Act of 2017

Military-Veterans Advocacy supports this bill. This bill makes good sense. There is no need to duplicate the efforts of qualified medical professionals. In many cases, the VA doctors performing Compensation and Pension examinations are not board certified in the pertinent specialty. The evidence of qualified non-VA doctors should be accepted into evidence. There is no need to duplicate the evidence.

Thank you for allowing Military-Veterans Advocacy to testify on this matter.

John B. Wells
Commander, USN (Retired)
Executive Director


STRAIGHT BASELINES
VIETNAM
Solid Red Line - Baseline
Dashed Line - Limit of Territorial Seas
Solid Blue Line - VN Service Medal
SOUNDINGS IN FATHOMS
NOT TO BE USED FOR NAVIGATION
CHINA
VIETNAM
LAOS
THAILAND
KAMPUCHEA
BURMA
GULF OF TONKIN
HAINAN DAO
SOUTH CHINA SEA
GULF OF THAILAND
EXHIBIT
tabbies
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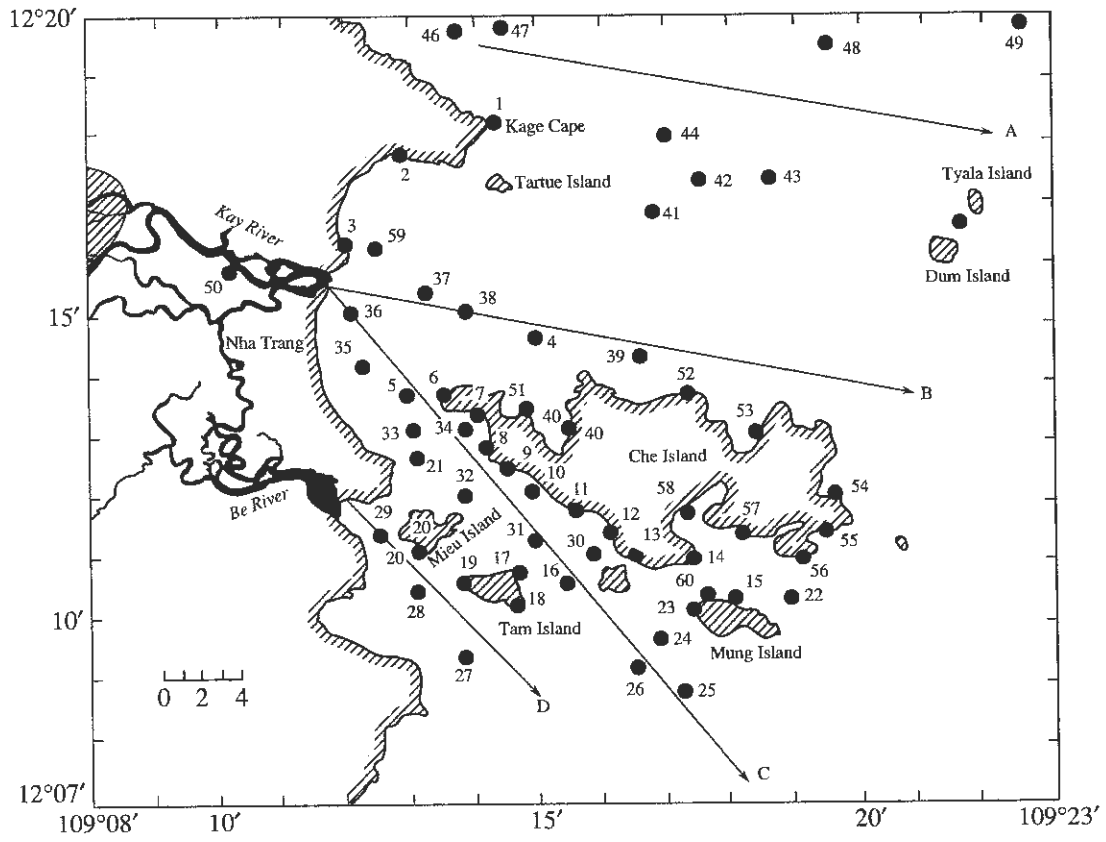


Fig. 1. The location of stations in Nha Trang Bay, 1990–2002. The shaded patch in the upper reaches of the Kay River (left upper part of the map) is the lower limit of the area where dioxin-containing defoliants were used during the American–Vietnamese war (Vietnam War). Transects A, B, C, and D are shown by arrows (explanation in the text).

(stations 4, 37, 38, 39) at a depth of 15–20 m, a non-silted sand plateau was observed in the late 1980s and the early 1990s.

3. Transect C—the area between Che Island and the islands of Mieu and Tam. By virtue of the hydrological features of the bay, a large part of the suspended material from the Kay River is deposited here.

4. Transect D—the southern bay. It receives suspended material from the Be River.

Analyses were performed in the Laboratory of Ecotoxicology, the Institute of Ecology and Evolution Problems, Russian Academy of Sciences. In the bottom sediment samples collected at stations 5, 16, 20, 21, 24, 27, 29, 30, 33, 36, 37, 39, 41, 44, 49, and 50, the total content of dibenzo-p-dioxins (PCDD) and dibenzofurans (PCDF) (in all, 17 congeners) was determined by high resolution chromato-mass spectrometry and expressed using the international equivalents of toxicity (1-TEQ or dioxin equivalent) relative to the most toxic congener 2,3,7,8-TCDD [3]. Specific isomer analysis of PCDD and PCDF was carried out on a GC-MS "Finnigan" MAT-95XL, Hewlett Packard HP 6890 Plus, at a resolution of 10000 [20]. Dioxins are long-lived superecotoxicants [3, 18] and mask well less persistent compounds (among them toxic), the components of which they were formerly.

As is customary in chemico-analytical research, for averaging of small-scale nonuniformity in the distribution of the constituents of bottom sediments, samples at each station were taken at 4–5 points lying about 1 m from each other. Bottom sediments were removed to a depth of 10–15 cm (on hard sands) or 50–70 cm (on soft silts). Samples collected at the same station were pooled, while under water, into an integrated sample and placed in a 1.5-liter tightly sealed plastic vessel. Subsamples of the integrated samples were used in the toxicological research.

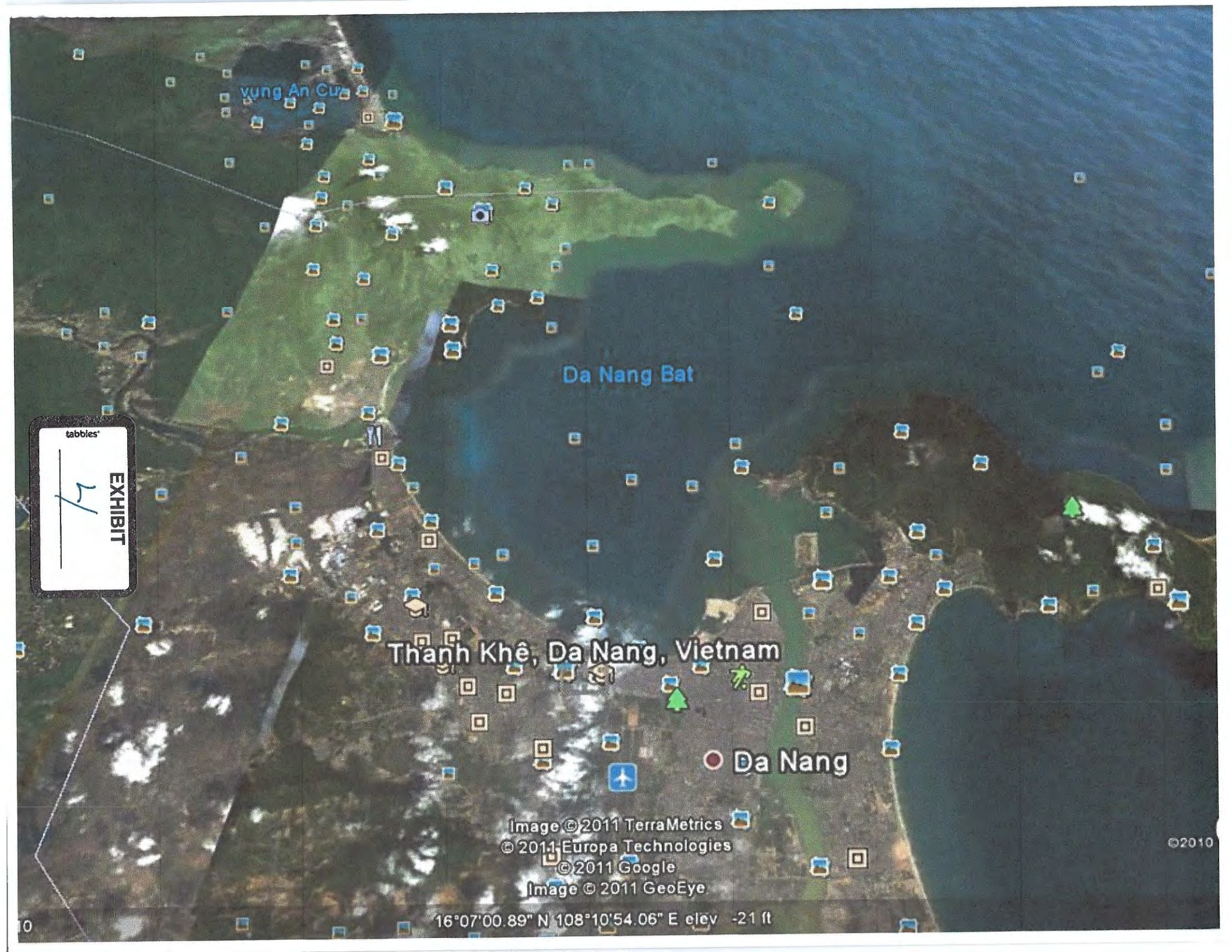
The following biological methods of environmental diagnostic [14] were used: fluorimetric, bioluminometric, and genetic methods and the transect technique.

Coral coverage and the state of bottom communities were assessed using the transect technique. Scleractinian corals were selected as the major object of study because, as was noted above, they are edificatory species indicative of the state of coral communities. Transects were made at stations 1, 3, 6, 11, 12, 15, 18, 19, 23, 25, 40, 42, 46, 47, and 49. The transect (graduated rope 100 m long) was perpendicular to the shore-

Table 2. Inhibition of the photosynthetic activity of algae (% of the control) on 24, 48, and 72 h exposure and of chemoluminescence of heterotrophic bacteria (toxicity index) in the presence of the bottom sediment suspension

Transect	Station	Depth, m	1-TEQ, ng/kg	Coefficient of inhibition of algae photosynthesis (K_{PA}) on 24, 48, and 72 h exposure												$^{24}K_{PA}$ (avg)	Toxicity index (I_t) for 30 min exposure
				Tetraselmis viridis			*Nannochloris* sp.			*Isochrysis galbana*			*Thalassiosira weissflogii*				
				24	48	72	24	48	72	24	48	72	24	48	72		
River	50	1.5	**7.9**	37	21	15	22	16	14	41	42	29	38	30	20	**35**	15
C	36	15.4	**2.4**	28	30	20	14	17	14	71	87	80	24	27	16	**34**	**44**
	5	25.7	**3.1**	39	38	30	32	32	22	94	69	91	76	41	55	**60**	**49**
	33	22.7	**4.2**	20	24	18	14	12	19	32	15	2	33	25	0	**25**	**73**
	32	19.4	–	8	25	18	11	17	13	24	0	0	18	0	0	15	**44**
	30	21.5	**1.8**	27	20	8	14	19	23	29	8	0	22	0	9	**23**	**62**
	16	20.6	**20.8**	11	17	17	9	17	16	23	0	0	18	0	0	15	**37**
	24	32.7	**0.4**	29	19	23	13	7	5	26	18	10	30	28	14	**25**	**94**
B	59	7.5	**16.8**	27	25	8	20	18	31	30	17	0	31	6	3	**27**	**80**
	37	21.8	**1.9**	14	10	0	9	9	13	22	7	14	8	0	0	13	**70**
	39	20.5	**0.8**	9	4	8	0	3	0	0	18	0	2	0	0	3	**30**
D	29	14.0	**1.0**	21	16	3	8	12	1	16	16	2	26	20	2	**18**	–97
	28	10.6	–	39	29	2	28	19	1	22	21	20	26	26	22	**29**	–47
	27	9.5	**2.1**	58	45	23	24	19	3	22	14	0	42	24	13	**37**	–108
	20	4.5	**0.7**	2	0	0	4	9	0	0	0	0	2	0	0	2	–157
A	41	21.0	**0.8**	29	25	13	15	9	4	31	18	17	15	13	10	**23**	**50**
	44	18.0	**0.5**	2	0	2	0	0	0	0	2	6	0	0	0	1	**49**
	49	18.0	**1.3**	0	0	0	0	0	0	0	8	6	0	0	0	0	–201
	47	5.0	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–65

Note: The depth and total amount of dibenzo-p-dioxins (PCDD) and dibenzofurans (PCDF) represented by the international equivalents of toxicity (I-TEQ) are given for stations of bottom sediment sampling. Bold-faced values indicate a significant toxic effect; "–"—measurements were not made.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Da Nang Bat
tabbies
EXHIBIT
Thanh Khê, Da Nang, Vietnam
Da Nang
Image © 2011 TerraMetrics
© 2011 Europa Technologies
© 2011 Google
Image © 2011 GeoEye
©2010
16°07'00.89" N 108°10'54.06" E elev -21 ft

*****PRELIMINARY ESTIMATE*****

6/9/2016 14:34

Preliminary Estimate of the Budgetary Effects of Implementing One Provision in the Amendment to S. 2921, for Spending Related to Blue Water Navy Vietnam Veterans for Brooke Jamison (4-6924)

All costs in millions of dollars, by fiscal year

INCREASES IN DIRECT SPENDING

Description		2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017-2021	2017-2026
Clarification of presumptions of exposure for veterans who served in vicinity of Republic of Vietnam	Est. Budget Authority	215	233	154	63	70	73	74	74	74	74	736	1,104
	Est. Outlays	215	233	154	63	70	73	74	74	74	74	736	1,104

INCREASES IN SPENDING SUBJECT TO APPROPRIATION

Description		2017	2018	2019	2020	2021	2017-2021
Clarification of presumptions of exposure for veterans who served in vicinity of Republic of Vietnam	Est. Auth Level	9	28	50	60	70	217
	Est. Outlays	8	26	47	58	69	208

Notes: Estimates are relative to CBO's March 2016 Baseline.

CBO Contact: Dwayne M. Wright, 6-5706

*****PRELIMINARY ESTIMATE*****

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EDUCATION:

Duquesne University School of Law, Pittsburgh Pa. J. D. conferred June, 1994, Activities: *Duquesne Law Review*, *Duquesne Business Law Journal*, **Juris Magazine**.

Prospective Commanding Officer's School, Commander Naval Reserve Force, New Orleans, LA, December 1989.

Prospective Executive Officer's School, Surface Warfare Officer's School Command, Newport RI, October-December 1987.

Nuclear Weapons Employment, Fleet Training Center, North Island CA, May 1981.

Sealed Authentication System School, Fleet Training Center, North Island CA, May 1981.

Department Head School, Surface Warfare Officer's School Command Newport RI, Sep 1980-April 1981.

Amphibious Warfare Planning, Amphibious Warfare School, Little Creek VA, October 1976.

Introduction to Amphibious Warfare, Amphibious Warfare School, Little Creek VA, October 1976.

Basic Anti Submarine Warfare, ASW School, Newport RI, August 1976.

Combat Information Center Officer School, Fleet Combat Direction Training Center, Dam Neck VA, March 1975.

1200 psi Main Propulsion Assistant School, Navy Destroyer School, Newport RI, April-June 1974.

Boiler Feed Water Test and Treatment Certification/Recertification, Navy Destroyer School, Newport RI, 1974 and 1976, Fleet Training Center Pearl Harbor HI 1982, Fleet Training Center, Norfolk VA 1987.

Navy Officer Candidate School, Newport RI 1972-1973.

Sangamon State University, Springfield, Ill., B. A. Degree conferred March, 1973

Lincoln Land Community College, Springfield, Ill., No degree 1969-1971.

EMPLOYMENT HISTORY

2013 - Present. Pro bono Executive Director, Military-Veterans Advocacy, Inc., (MVA) a non–profit 501(c)(3) organization dedicated to advocating for active duty and military members. This organization provides legal services, education and defense to members of the armed forces, counseling, education and assistance to veterans in obtaining veterans benefits and advocating for legislation on the federal, state and local level to benefit veterans. MVA also defends the religious rights of members of the armed forces. As Executive Director, met with various Congressional staffs on legislation beneficial to service members and veterans. Advocated for the adoption of HR 969/S681 the Blue Water Navy Vietnam Veterans Act and HR 1769/S 901 the Toxic Exposure Research Act. Completed an analysis of the proposed Military Justice Act of 2016 for Congressional committees. Prepared analysis on the Veterans Affairs appellate backlog problem. Worked with other veterans groups to promote awareness of military and veterans issues. Initiated federal court litigation to protect the rights of those who serve or have served in the armed forces. Conducted fundraising drives and addressed interested groups on matter concerning the organizations' goals. Frequent interviewee on radio, television and in the print media. Testified before the Veterans Affairs Committee of the United States Senate and provided written testimony to the Veterans Affairs Committee of the United States House of Representatives. Instrumental in establishing a local Veteran's Treatment Court.

2010 - 2013. As pro bono Director of Legal and Legislative Affairs for the Blue Water Navy Vietnam Veterans Association, a 501(c)(3) non profit corporation, reviewed all legal documents on behalf of the Association and recommended appropriate action to the Executive Director. Worked with the corporate board to develop strategies for federal legislation to promote veterans coverage of Agent Orange exposure by Navy veterans during the Vietnam War. Represented the Association in personal contacts with United States Senators, Members of Congress and their staffs in drafting and encouraging the adoption of appropriate legislation. Met with the permanent majority and minority Veterans Affairs Committee staffs in both Houses of Congress to advance legislation. Worked with various staffs to draft and introduce S. 1629 and HR 3612 in the 112th Congress and HR 543 and HR 1494 in the 113th Congress. Represented the Association in meetings with the Department of Veterans Affairs and various veterans groups including the American Legion, The Military Coalition and Fleet Reserve Association. Testified before the Institute of Medicine, the House Veterans Affairs Committee and provided presentations on the Blue Water Navy Vietnam Veterans Association and other veterans issues to numerous groups including events sponsored by the Louisiana Bar Associations and the John Marshall School of Law.

1994 - present. Sole practitioner in the Law Office of John B. Wells based in Slidell, Louisiana. Represents military clients of all services in courts-martial trials and before administrative bodies including records correction boards and veterans courts. Represented veterans at all levels of the process including the Board of Veterans Appeals and the Court of Appeals for Veterans Claims. Acted as counsel for military members and veterans in various federal courts and other federal adjudication proceedings including the Merit Systems Protection Board, the EEOC and military tribunals. Defended clients before state courts in St. Tammany, St. Bernard, Washington and Jefferson Parish. Member of the Conflicts Panel for the 22nd Judicial District Court Indigent Defender Office pre-Katrina. Operates a successful civil and criminal practice in the 22nd and 24th Judicial Circuit and the Civil District Court as well as federal courts with emphasis on employment law, personal injury and federal tort claims.

1989-1994. Commanding Officer of the Navy and Marine Corps Reserve Readiness Center. Pittsburgh PA and during 1992-1993 also the Commanding Officer of the Naval Reserve Center McKeesport, PA. Responsible for the training and administrative support for over 1000 reservists including the development of tactical and propulsion engineering courses. Provided training support to four smaller "feeder" Reserve Centers. Conducted officer training in all aspects of surface warfare. Supervised construction of new Center and consolidation with the McKeesport Center. Special court-martial convening authority for active duty and reserve personnel. Responsible for the manning requirements of the active duty staff and reserve units. Acted as contracting officer for small purchases and responsible for budget execution. Rank: Commander (O-5).

1987-1989. Executive Officer of the *USS Puget Sound* (AD-38), a Combat Logistics Force ship responsible for the repair and maintenance of other ships. While onboard, completed shipyard overhaul and refresher training. Deployed to the North Atlantic as part of a NATO exercise. During this two month deployment was responsible for interfacing the ship with both United States and allied Navies and providing maintenance support for ships from national and allied Navies. The ship also deployed to the Mediterranean, the Indian Ocean and the Persian Gulf. Responsible for ship wide budget execution. Responsible for ship wide manning and the acquisition and training of qualified personnel prior to deployments. Supervised 40 officers and approximately 1150 enlisted personnel. Rank: Commander (O-5).

1987. Main Propulsion Assistant and for several months Acting Chief Engineer for the pre-commissioning crew of *USS Wisconsin*, (BB-64), a reactivated Battleship. Responsible for ship's force training and the monitoring of the engineering rehabilitation of the Battleship. Acted as Chief Engineer until the assignment of the permanent officer. Transferred upon selection to Commander (O-5). Rank: Lieutenant Commander (O-4).

1984-1987. Naval Reserve Force Ship Coordinator for Commander Naval Surface Reserve Force. Responsible for the operation and scheduling of nineteen ships of the Naval Reserve Force. Monitored manpower and training requirements and provided support as needed. Rank: Lieutenant Commander (O-4).

1982-1984. Chief Engineer of the *USS Worden* (CG-18), a missile cruiser. Responsible for the operation and maintenance of the ship's propulsion system, electrical distribution system, water distribution, damage control and auxiliary equipment (including the ship's distilling system). Provided support to the ship's combat systems. Deployed to the Western Pacific, Indian Ocean and North Arabian Sea. Responsible for departmental budget execution. Supervised five officers and approximately 140 enlisted personnel. Rank: Lieutenant Commander (O-4).

1982. Chief Engineer of the *USS Badger* (FF-1071), a frigate. Appointed Chief Engineer when predecessor detached for cause several weeks before the scheduled "Light Off Exam." Responsible for the operation and maintenance of the ship's propulsion system, electrical distribution system, water distribution, damage control and auxiliary equipment (including the ship's distilling system). Guided ship through successful "Light Off Exam" and "Operational Propulsion Plant Examination." Responsible for departmental budget execution and personnel management. Supervised three officers and approximately 80 enlisted personnel. Rank: Lieutenant Commander (O-4).

1981-1982. Operations Officer, of the *USS Badger* (FF-1071), a frigate. Prior to the shipyard overhaul co-ordinated the ship's operations and training schedule including operations and exercises with allied ships as part of the RIMPAC exercises and later with ships of the Royal Australian Navy. During the ship's overhaul acted as the ship's coordinator and responsible for the repair and rehabilitation of all equipment including propulsion engineering, auxiliary and combat systems. Responsible for departmental manning and budget execution. Supervised two officers and 40 enlisted personnel. Rank: Lieutenant (O3)/Lieutenant Commander (O-4).

1978-1980. Commanding Officer, of Naval Reserve Center, Huntington VA. Responsible for the training and administrative support for over 200 reservists including the development of tactical and propulsion engineering courses. Responsible for the manning requirements of the active duty staff and reserve units. Acted as contracting officer for small purchases and responsible for budget execution. Rank: Lieutenant (O-3).

1977-1978. Assistant Operations Officer, of the *USS Coronado* (LPD-11), an Amphibious Transport Dock. Responsible for assisting the Operations Officer in the support of amphibious operations and the scheduling of ship's exercises. Participated in national and NATO exercises during a Mediterranean deployment. Rank: Lieutenant (O-3).

1977. Chief Engineer of the *USS Coronado* (LPD 11) an Amphibious Transport Dock. Appointed Chief Engineer when predecessor asked to be relieved. Responsible for the operation and maintenance of the ship's propulsion system, electrical distribution system, water distribution, damage control and auxiliary equipment (including the ship's distilling system). Guided ship through successful "Operational Propulsion Plant Examination." Responsible for departmental manning and budget execution. Reassigned as Assistant Operations Officer when predecessor's numerical relief reported aboard. Supervised 4 officers and approximately 70 enlisted personnel. Rank: Lieutenant (O-3).

1976-1977. Main Propulsion Assistant of the *USS Coronado* (LPD 11) an Amphibious Transport Dock. Responsible for the operation and maintenance of the ship's propulsion system, water distribution and some auxiliary equipment (including the ship's distilling system). Supervised approximately 70 enlisted personnel. Rank: Lieutenant (Junior Grade) (O-2) /Lieutenant (O-3).

1974-1976. Main Propulsion Assistant of the *USS Holder* (DD 819) a Destroyer. Responsible for the operation and maintenance of the ship's propulsion system, water distribution and some auxiliary equipment (including the ship's distilling system). Supervised approximately 60 enlisted personnel. Rank: Ensign (O-1)/ Lieutenant (Junior Grade) (O-2).

1973-1974. Program Assistant at the Navy Safety Center, Norfolk, VA. Co-ordinated traffic accident reports, analyzed data and traveled in support of shore safety programs. Rank: Ensign (O-1).

1970-1972. Clerical Employee, for the Illinois State Police District #9. Analyzed traffic accident data and provided information to the sworn officers. Co-ordinated the District's Traffic Information Planning System.

MILITARY QUALIFICATIONS

Command at Sea (not assigned)

Navigator

Mechanical Engineering Subspecialist (based on significant experience)

Surface Warfare Officer

Tactical Action Officer

Engineering Officer of the Watch

Officer of the Deck (underway)

Combat Information Center Watch Officer

Command Duty Officer,

SIGNIFICANT PUBLISHED CASES

Milas v. United States, 42 Fed.Cl. 704, (1999).

Reyes v. Sazan, 168 F.3d 158 (5th Cir. 1999).

Lawrence v. McCarthy, 344 F.3d 467, (5th Cir. 2003).

Forbes v. United States, 61 M.J. 354 (C.A.A.F. 2005).

Strickland v. United States, 69 Fed.Cl. 684 (2006)

United States v. McKeel, 63 M.J. 81 (C.A.A.F. 2006)

State of Louisiana v. Captain Robert Malone, JA, Louisiana Army National Guard. 28 So.3d 1050, 2009-0060 (La.App. 1 Cir. 9/18/09)

(N G) v. United States, 94 Fed.Cl. 375 (2010).

House v. United States, 99 Fed.Cl. 342 (2011).

Russell v. United States, 102 Fed.Cl. 9 (2011).

Caldbeck v. United States, 109 Fed.Cl. 519, 2013 WL 867879 (2013).

Havens v. Mabus, 759 F.3d 91 (D.C. Cir. 2014)

Foster v. Mabus, No. CV 11 1931 (BAH), ___ Fed.Supp.2d ____, 2015 WL 2198851 (D.D.C. May 12, 2015)

ADMITTED TO PRACTICE BEFORE THE FOLLOWING COURTS

Supreme Court of the United States

Supreme Court of the State of Louisiana

Supreme Court of the Commonwealth of Pennsylvania

Court of Appeals of the District of Columbia

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals for the Federal Circuit

United States Court of Appeals for the District of Columbia Circuit

United States Court of Appeals for the Armed Forces

United States Navy-Marine Corps Court of Criminal Appeals

United States Army Court of Criminal Appeals

United States Air Force Court of Criminal Appeals

United States Court of Appeals for Veterans Claims

Department of Veterans Affairs

United States Court of Federal Claims

United States District Court for the Western District of Pennsylvania

United States District Court for the Western District of Louisiana

United States District Court for the Middle District of Louisiana

United States District Court for the Eastern District of Louisiana

United States District Court for the Northern District of Texas

United States District Court for the Southern District of Texas

United States District Court for the District of Columbia

PRESENTATIONS

Military Commissions, Slidell Rotary Club, Slidell, LA June 2004

Servicemember's Civil Relief Act, Slidell Bar Association, Slidell, LA August 4, 2004

Veterans Law, Louisiana State Bar Association, Disability Benefits Seminar, Baton Rouge, LA February 18, 2005

Nuclear Weapons 101 (Unclas) Jericho Convention, Oakley Kansas September 15, 2007.

Veterans Law, Louisiana State Bar Association Disability Law Seminar, Baton Rouge LA March 12, 2008.

Veterans Rights: The Rights of the Military Veteran, Telecast by National Business Institute, March 12, 2008.

Blue Water Navy Issues. Institute of Medicine (IOM) Committee to Review the Health

Effects in Vietnam Veterans of Exposure to Herbicides (Seventh Biennial Update), San Antonio TX June 19, 2008.

Freedom of Expression, Rights and Remedies, Foundation of Christian Military Ministries, Ft. Benning, Georgia, March 30, 2010.

Blue Water Navy Vietnam Veterans and Agent Orange Exposure Institute of Medicine, Board on the Health of Select Populations, Washington, D.C., May 3, 2010.

Health Effects of the Vietnam War - The Aftermath, United States Congress, House Committee on Veterans Affairs, Washington D.C., May 5, 2010.

Agent Orange Benefits for Navy Veterans, Bon Homme Richard Reunion, Baton Rouge, LA, September 10, 2010.

Fighting for the Veteran: Understanding Service Connected and Non Service Connected VA Claims Louisiana State Bar Association *Navigating the Ocean of Disability Law*, April 1, 2011.

Blue Water Navy Update, John Marshall Law School Veterans Legal Support Center & Clinic, *Military Service and the Law: Issues of Justice and Dignity at Home and Abroad*, June 4, 2011.

The Future of the Blue Water Navy Legislation, American Legion Legislative Committee, American Legion Convention, Minneapolis, MN, August 27, 2011.

Veterans Day Celebration, St. Tammany Parish Veterans Memorial, November 11, 2012.

Review of VA Responsiveness to Veterans, Kiwanis Club, Mandeville, LA November 13, 2012.

VA Claims Backlog, Interview, Fox and Friends, Fox News Channel, April 2, 2013.

Are US vets dying while waiting for benefits, Fox and Friends, Fox News Channel, April 6, 2013,
http://video.foxnews.com/v/2281927482001/are-us-vets-dying-while-waiting-for-benefits/

Soldier punished for political beliefs, Fox and Friends, Fox News Channel, June 9, 2013, http://video.foxnews.com/v/2464941001001/soldier-punished-for-politics/

Interview by Sean Hannity, Hannity Show, Fox News Channel, June 10, 2013, http://video.foxnews.com/v/2470020153001/fnc-video/

Interview by Mike Huckabee, Huckabee Radio Show, Media fire.com June 12, 2013,

http://www.mikehuckabee.com/_cache/files/cedf51d4-e702-45db-9909-7591992c1477/John%20Wells.mp3

Interview by Mike Huckabee, Huckabee Radio Show, Media fire.com, July 14, 2013 http://www.mikehuckabee.com/_cache/files/862c9e1f-68f0-41ec-be67-97df915a7b2c/John%20Wells%207%2014%2013.mp3

Interview by Mike Huckabee, Huckabee Radio Show, Media fire.com, August 21, 2013, http://www.mikehuckabee.com/_cache/files/8cb1febf-931f-4050-9311-85e964b81c83/John%20Wells%208%2021%2013.mp3

Comments on the Navy Yard Shooter, Fox and Friends, September 18, 2013.

Admissibility of Polygraphs in State and Federal Courts of Louisiana, Slidell Bar Association, January 2, 2014.

Veterans Benefits Lag Behind Welfare, Fox and Friends Weekend, February 8, 2014, http://video.foxnews.com/v/3170986100001/veterans-benefits-lag-behind-welfare-payments/#sp=show-clips

Will vets and their families ever get justice? Fox & Friends Weekend, May 18, 2014, http://video.foxnews.com/v/3574118312001/will-vets-and-their-families-ever-get-justice/?#sp=show-clips

Interview with J. D. Hayworth, America's Forum, on *Gray v. McDonald,* April 27, 2015, http://www.newsmaxtv.com/live/show/AmericasForum/archive/?ooid=ppMDlydDpYOUcVFg9QBut1m34srRO5jr .

Blue Water Navy Update, USS Ponchatula Reunion, Ponchatula LA, May 15, 2015.

Status of Blue Water Navy Legislation, United States Navy Memorial, Washington, DC, May 23, 2015.

Interview with J. D. Hayworth, *Newsmax Prime* on *Blue Water Navy*, June 24, 2015, http://www.newsmaxtv.com/shows/newsmax-prime/archive/?ooid=dkbWt1dTq1hCI96Waw7zqbZjev1mWDwt.

Webinar sponsored by Hill and Pontoon, *Will the VA Now Admit that You Were in Brown Water*? September 10, 2015, http://www.hillandponton.com/blue-water-and-agent-orange/

Testimony before the United States Senate Veterans Affairs Committee, *Examining the Impact of Exposure to Toxic Chemicals on Veterans and the VA's Response*, September 29, 2015, http://www.veterans.senate.gov/hearings/exposures09292015

Webinar sponsored by the Federal Bar Association, *Veterans Law Update*, November 12, 2015.

Interview by Ed Berliner, *Problems with VA,* The Hard Line, Newsmax TV, June 8, 2016, http://www.newsmaxtv.com/shows/the-hard-line/archive/vid/BmeTUwNDE6D2bqFc5wJo5yvOMswgm4up/

PUBLICATIONS:

To solve the VA appeals problem, get rid of the hamster wheel, The Hill, Jan 5, 2017.

The Perils and Pitfalls of Privitation if the VA, The Hill, January 10, 2017.

VA leaving Navy veterans adrift in a sea of agent orange, The Hill, January 22, 2017.

ORGANIZATIONS

St. Tammany Republican Party Executive Committee (2016-Present)

Military Officers Association of America (Life Member).

Judge Advocate's Association (Life Member).

American Legion Post 374, Slidell LA (2003-present).

Fleet Reserve Association (Life member).

Veterans of Foreign Wars Ozone Post 5735, Slidell, LA (Life Member).

United States Naval Institute (Life Member).

Vietnam Veterans of America (Life Member).

Association of the United States Navy (Life Member).

St. Tammany Parish Government, New Direction 2025, Chairperson of the Implementation Committee. 1999-2001.

St. Tammany Parish Chapter Alliance for Good Government 1999-2013. Chapter Vice President 2001, President 2007-2011.

St. Tammany Parish Right to Life 2005-present. Vice President 2008-2011. President 2011-2015.

East St. Tammany Parish Chamber of Commerce Public Policy Committee 1997-present.

Commissioner, Louisiana Naval War Memorial Commission. 2016-Present.

American Bar Association 1994-2009.

Pennsylvania Bar Association 1995-2013.

Louisiana State Bar Association 1995-present.

Federal Bar Association 1996-present.

St. Tammany Parish Government, St. Tammany Veterans and Military Advisory Council, Legal Advisor 2012-present.

HOUSE COMMITTEE ON VETERANS'AFFAIRS
Witness Disclosure Statement
Required by House Rule XI, Clause 2(g)

Your Name: CDR John B. Wells, USN (Retired)		
1. Are you testifying on behalf of a Federal, State, or Local Government entity?	**YES**	**NO X**
2. Are you testifying on behalf of an entity other than a Government entity?	**YES X**	**NO**
3. Other than yourself, please list what entity or entities you are representing: Military-Veterans Advocacy		
4. Please list any offices or elected positions held or briefly describe your representational capacity with the entities disclosed in question 3. Executive Director (unpaid)		
(For those testifying on behalf of a Government entity, ignore these questions below) (Additional pages may be appended to this Statement if more space is needed)		
5. a) Please list any Federal grants or contracts (including subgrants or subcontracts), including the amount and source (agency) which you have received and/or been approved for since January 1, 2015: None		
b) If you are testifying on behalf of a non-governmental entity, please list any federal grants or contracts (including subgrants or subcontracts) and the amount and source (agency) received by the entities listed under question 3 since January 1, 2015, which exceeded 10% of the entities' revenues in the year received: None		
6. If you are testifying on behalf of a non-governmental entity, does it have a parent organization or an affiliate who you specifically do not represent? If so, list below:	**YES**	**NO X**

Signature://s// John B. Wells

Date: 3/22/17