

# Blue Water Navy Vietnam Veterans Association



**The VA**

**vs.**

**The Blue Water Navy  
Vietnam Veterans:**

**A Simple Overview**

**John Paul Rossie  
Executive Director**

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## INTRODUCTION

What I have compiled here is a reasonably complete overview of the basic concepts surrounding the Blue Water Navy Vietnam Veteran issue as addressed in current legislation HR-543. The legislation, now with 255 cosponsors, focuses on a 2002 decision by the Department of Veterans Affairs (VA) to exclude specific Vietnam veterans from receipt of benefits granted to them under the Agent Orange Act of 1991.

When the Agent Orange Act was passed, the Department of Veterans Affairs created their own internal regulations to guide the determination of eligibility for resulting service-connected disability benefits. The original eligibility extended to all military personnel who served within the Vietnam Theater of Combat. The singular designation for service within the Theater of Combat was the award of the Vietnam Service Medal (VSM). In 2002, 11 years later, the VA changed the definition of a Vietnam veteran to 'an individual whose boots literally touched the ground in the sovereign territory of the Republic of Vietnam (South Vietnam or RVN).' The VA quite illogically and irrationally stated that only individuals who stood on the ground of Vietnam would be provided health care and compensation for the diseases that it would come to recognize as being caused by exposure to the herbicide Agent Orange. That herbicide compound contained a carcinogenic component called Dioxin. All other individuals within the Theater of Combat who came down with those identical diseases must have had a cause other than the herbicide Agent Orange and its dioxin component. But there was no such second cause.

The result of this change was a dictum that the harmful physical effects of Agent Orange stopped completely and abruptly at the coastline of Vietnam. Unfortunately, the Agent Orange itself, which was spread beyond the landmass by wind, by runoff water, and by transport of contaminated dust and other particles, was not confined to a specific geographical region based on a bureaucratic announcement by a federal agency. The basic concept is ludicrous, as was discovered by King Canute trying to hold back the tide.

To make matters worse, the Agent Orange Act of 1991 put into place what is known as a "presumption of exposure." This "presumption" acknowledged that there was no way to definitively tell who had actually been exposed to Agent Orange until that individual came down with one of the acknowledged diseases. This presumption was implemented because there was no scientific data in existence that could identify who was actually exposed. The VA originally included all members of the Seventh Fleet who entered the Vietnam Theater of Combat. By declaring that a physical boundary for Agent Orange exposure stopped abruptly at the coastline, the VA was claiming to have some knowledge of who could have been exposed. This contradicted the known and future findings of medical and scientific research. Not only did the VA claim to know where the exposure area stopped (even though it had no measurement data), it had no proof that any of the veterans who served on land or on the inland waterways were ever actually exposed to the Agent Orange. Yet those same veterans currently receive medical and monetary VA benefits, while those without boots-on-ground do not.

## **TABLE OF CONTENTS**

- 1 What is the distinction between Blue Water Navy and Brown Water Navy?
- 2 The decision of the VA to exclude sea-based veterans does not stand up to a test of Logic.
- 3 Results of an independent “Grass-Roots America” survey by Blue Water Navy Assoc.
- 4 The Institute of Medicine (IOM) has continuously and consistently supported the inclusion of Blue Water Navy veterans in the Presumptive Exposure to Agent Orange.
- 5 The VA has purposely deceived the Congress and the American Public on statements made by the IOM.
- 6 Blue Water Navy personnel need to be considered as veterans who have been waiting 14 years for their VA Healthcare appointments, far surpassing the wait time of veterans in the Phoenix VA Hospital and elsewhere.
- 7 How many Blue Water Navy personnel served during the Vietnam War?
- 8 How do we determine and verify a headcount of the Blue Water Navy personnel who might benefit from the passage of HR-543?
- 9 What area is defined as the Vietnam Theater of Combat?

1. What is the distinction between Blue Water Navy and Brown Water Navy?

# What is the Blue Water

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The issue of "brown water" vs "blue water" is easily misunderstood. This differentiation is easier to look at from the viewpoint of "ships that served within the geographical boundaries of Vietnam" and "ships that served only offshore" Vietnam. "Brown water" is meant to describe Inland Waterways, literally inside the land boundaries of the country. So even though the actual color of the water in close-to-shore locations was certainly brown, if it was offshore, and part of or open to the 'deep blue sea,' it would NOT be considered a brown water location for this specific definition being used by the VA. In fact, the VA has not conceded that the water itself, either for inland waterways or the deep ocean water, contained anything at all related to the presence of herbicide. Their definition is only based upon geographical LOCATION that will grant an individual the presumption of exposure to herbicide in Vietnam.

For the purposes of granting presumption of exposure to herbicide, the VA Compensation Division has stated that no ports, bays or harbors are considered Inland Water, regardless of what color they might have been. Even though several Regional Offices as well as the Board of Veterans Appeals has several times awarded presumptive exposure to herbicide (Agent Orange-dioxin) to a veteran who was clearly outside the confines of that definition, those rulings do not set precedent and apply only to the circumstances of that specific individual.

Yes, that is very inconsistent, illogical and seemingly a 'legal contradiction.' But VA states that each case is unique and associated rulings only apply to that specific veteran. This is a very strong target for a legally-based attack BUT FOR THE FACT that VA Law is not a part of the American legal system of the public courts. It is based on a set of rules and regulations that stand apart from common law as used in the public courtroom.

For a "Blue Water" ship to be considered to have served on "brown water," the ship had to have actually passed an imaginary line drawn across the mouth of a river or canal and located itself (at least partly) within the geographical boundary of Vietnam.

Any of the many inlets along the shore, including the ports, bays and harbors, that are open to the sea for deep water vessels are not considered Inland Waterways under the definition of the Inland Waterways Project 211, [211\\_AOSHIPS.VBACO@va.gov](mailto:211_AOSHIPS.VBACO@va.gov), which is the office within the VA that releases a list of ships that are acknowledged to fall within the VA definition of ships having been on Inland Waters or ships that had crew that went ashore. In this latter instance, only those specific crew members that went ashore (and thus had "boots-on-ground") are granted the presumption of exposure, not the entire ship's crew.

I hope that helps you understand the current distinction that the VA is making in their definition of "Blue Water Navy."

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2. The decision of the VA to exclude sea-based veterans does not stand up to a test of Logic.

# Blue Water Navy Vietnam Veterans Association



October 4, 2014  
PRESS RELEASE - Revised  
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## **Blue Water Navy Removal from Presumptive Herbicide Exposure Fails the Test of Logic**

Members of the Blue Water Navy are caught in a failure of logic. According to the rules of logic, either the concept of “presumptive exposure” needs to be consistently applied or it must be abandoned. But it cannot be contradictory, randomly interpreted or selectively assigned.

‘Presumptive Exposure’ is based on the concept that a lack of data precludes any one individual from providing definitive proof of exposure to a substance (in this case, herbicide used in Vietnam). If individual A is a member of a group that was potentially exposed, and that individual later presents with specific disease deemed to be related to herbicide exposure, then individual A is ‘presumed to have been exposed’ by virtue of two elements: proximity to the exposure area and diagnosis of a specific disease.

The original area of acknowledged exposure, as written into the VA’s 1991 M-21 Manual, was the Theater of Combat, as demonstrated by the award of the Vietnam Service Medal. By definition, the Theater of Combat was the identical area designated as eligibility for award of the Vietnam Service Medal. References for proof would be an image of the boundaries of the Theater of Combat and the identical area of eligibility for the Vietnam Service Medal; and the history of eligibility for presumption of exposure to herbicide as written in the M-21 Manual, showing changes from 1991 through 2002. These are available for review at <http://www.BlueWaterNavy.org/logic1.jpg> and <http://www.BlueWaterNavy.org/logic2.pdf>

In 2002, the VA changed the definition of a Vietnam veteran to “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 action created an arbitrary line that defined where herbicide exposure stopped; that line was the shoreline of Vietnam. It does not include presence within the ports and harbors of South Vietnam, some of which are surrounded on 3 sides by land. Presence on the water is excluded from eligibility unless that water was fully inside the geographical boundary of the landmass of South Vietnam. The one exception is the inner harbor at Qui Nhon, which is located beyond a bottle-neck entrance.

The statement of the 2002 alteration of the M-21 demands that exposure to herbicide could not take place off the landmass of RVN. Presence in the harbors cannot result in presumptive exposure, nor can any proximity to the land while offshore. The logic of this alteration creates the following ambiguity:

- 1) Because no data exists to provide documented evidence, a veteran who served on land is given the presumption of exposure to herbicide if he has a disease associated with exposure to herbicide;
- 2) Because no data exists to provide documented evidence, a veteran who served offshore is not given the presumption of exposure to herbicide if he has a disease associated with exposure to herbicide;

Veterans who served offshore Vietnam meet the criteria for eligibility of presumption of exposure to herbicide because, through multiple potential exposure routes, offshore veterans were in an area that had the definite potential for herbicide exposure. This is the same criteria for 'presumption of exposure' that is applied to those veterans with "boots on ground." The herbicides drifted on the air, saturated into the dirt and dust, clung to particulate matter suspended in the atmosphere, and floating on or in the water being discharged from the rivers and canals into the sea. These define the risk of exposure to every ship in the 7<sup>th</sup> Fleet that served offshore Vietnam at any distance within the Theater of Combat (and possibly beyond).

There is no medical, scientific or logical proof in existence to refute the assertion of offshore exposure or to support the assertion of only on-ground exposure. Absolutely no environmental evidence exists to prove herbicide exposure of any veteran who served on land or on the inland water system or offshore Vietnam. The offshore veterans present with the identical diseases as those who served with 'boots on ground.' They were in the same area and must have had the same causation for their identical diseases. If the VA used consistent logic, all Blue Water Navy veterans would be given the same presumption of exposure as those veterans who actually served on land in the Republic of South Vietnam.

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3. Results of an independent “Grass-Roots America” survey conducted by Blue Water Navy Association at random locations

## **RESULTS OF A GRASS-ROOTS SURVEY ON SUPPORT FOR HR-543**

Blue Water Navy veterans of Vietnam have been trying to get their case heard in the court of public opinion since 2010. Not only have their legislative efforts gone unrewarded, but their story has been ignored by every major media outlet in the country.

In 2010, their legislation died in committee. In 2012, despite having 264 co-sponsors, their legislation again died in committee, never brought to the floor of the House or Senate for a vote; and this despite the fact that 264 cosponsors is well beyond the simple majority. 2014 is coming to a close with 255 house cosponsors, and the Bill is still being left in Committee.

Who are the Blue Water Navy Vietnam veterans? They are the Navy and Fleet Marine personnel who are dying of Agent Orange/dioxin-related diseases and cancers that the VA refuses to provide any Health Care benefits for. Those VA benefits were taken away from them in 2002 by the stroke of a pen even though their benefits were included in the Agent Orange Act of 1991. But the VA needed to save some money; maybe for executive bonuses? And these men have been suffering and dying while trying to pay for the care of their own service-related War injuries.

The VA was so desperate to rid themselves of payment to these veterans that they actually changed the definition of a "Vietnam veteran" to mean only those who had their "boots-on-the-ground." Those who were in the harbors and offshore, without touching the ground, are no longer recognized as Vietnam War veterans; they are merely Vietnam Era veterans who are excluded not only from receiving VA Healthcare benefits, but stripped of the recognition of their participation in the War itself.

The Blue Water Navy Vietnam Veterans Association, headquartered in Littleton, CO has been wondering if the Congress has really been representing the will of the American people. We reached out to various levels of government across America asking if the grass-roots of America really did turn their back on them. They only did a small sampling, but what they found was truly inspirational, even though it hasn't yet impressed Congress.

Every agency they asked this question to had a positive response. They have now collected Resolutions in Support of HR-543, a Bill in the House of Representatives that will return their Healthcare benefits if they are currently disabled by one of the diseases recognized by the VA to be caused by Agent Orange/dioxin. Five Cities, seven Counties, two Tribal Councils, and 13 State Governments have taken it upon themselves to send Resolutions to both the House and Senate stating that they stand behind these Blue Water Navy veterans and their quest for the return of their VA benefits.

Attached is the list of government agencies that have spoken out in support of these disabled veterans that the VA, and possibly the US Congress, has turned their backs on.

## LIST OF CURRENT RESOLUTIONS

Resolutions in support of The Blue Water Navy Agent Orange Act of 2014 have been obtained from these entities, with their date of adoption shown:

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

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

State of Vermont	
State of Rhode Island	5/14/2014
State of Alaska	4/4/2014
State of Hawaii	4/4/2014
State of Pennsylvania	4/2/2014
State of Arizona	2/24/2014
State of Kansas	2/16/2013
State of New York	6/18/2012
State of Maryland	5/8/2011
State of Tennessee	5/24/2010
State of Louisiana	4/28/2010
State of Alabama	1/12/2010
State of Texas	5/19/2009

### TOTALS:

5 Cities  
7 Counties  
2 Tribal Council  
13 States

4. The Institute of Medicine (IOM) has continuously and consistently supported the inclusion of Blue Water Navy veterans in the Presumptive Exposure to Agent Orange.

## BEYOND ARBITRARY AND CAPRICIOUS

For the fourth time in just over four years, the Institute of Medicine (IOM) has taken a position contrary to current Department of Veterans Affairs (DVA or VA) policy regarding the exposure of Blue Water Navy personnel to Agent Orange/Dioxin (AO/D) during their service in the Vietnam War. The DVA continues to claim that these offshore Navy and Marine personnel were not exposed to Agent Orange during their active military service. The IOM continues to undermine that position by stating that all veterans of that War had nearly equal probability of exposure to the herbicide and that none of them can scientifically prove they were exposed.

The DVA persists in its irrational and scientifically groundless position of withholding health care and compensation from Blue Water Navy Vietnam veterans who are sick and dying of the exact diseases that other military veterans of that War receive care for on a routine basis. This article reviews those reports in chronological order and shows the consistency of the IOM's conclusions and, consequently, the absurdity of the DVA's position.

### The First Report

The IOM's "Veterans and Agent Orange: Update: 2008" (released July 24, 2009<sup>1</sup>) clearly states: "...members of the Blue Water Navy should not be excluded from the set of Vietnam-era veterans with presumed herbicide exposure." The Update: 2008 is also the IOM's first serious examination of an Australian report on ship-board water distillation from a 2002 Queensland, Australia Study titled "Examination of the Potential Exposure of Royal Australian Navy (RAN) Personnel to Polychlorinated Dibenzodioxins and Polychlorinated Dibenzofurans via Drinking Water." This concept of contaminated water aboard both American and Australian naval vessels now plays an important part in the assumptions regarding plausible pathways for AO/D contamination of the offshore Blue Water Navy personnel of both countries.

### The Second Report

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

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

Of course, this information was already known and was the basis for using ‘presumptive exposure’ when the 1991 Agent Orange Act was written. Because no measurement data existed from the time of the Vietnam War, all statements attempting to address such measurements will always be only pure speculation. We know that the entire environment of South Vietnam was contaminated with AO/D, but we don’t know how much AO/D was released in any specific area and we don’t know how much AO/D contaminated any individual or group.<sup>2</sup>

### **The Third Report**

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

### **The Fourth And Newest Report**

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

- The individuals who served offshore Vietnam should not be exempted from receipt of VA benefits for Agent Orange-related disabilities, as there is no medical or scientific evidence to deny those veterans the benefits that other service members from the Vietnam War receive on a regular basis;
- There were several viable pathways for exposure of the crews on the ships of the Seventh Fleet who served offshore Vietnam;
- There is no evidence that Agent Orange/Dioxin did not poison the veterans in question and there is overwhelming evidence indicating a high probability that it did;
- No single group of veterans that served anywhere in Southeast Asia should be removed from the benefits for presumptive exposure to the deadly herbicides used in the broader geographical area throughout the Vietnam War.

In the December 2013 release of “Veterans and Agent Orange: Update: 2012,” the IOM once again reminded the DVA that no evidence exists for reliably segmenting Vietnam veterans by location if intending to address exposure to the carcinogenic element (TCDD) found in the herbicides used throughout Southeast Asia. They also stated that even though reliable scientific measurements do not exist to quantify the exact amounts of any TCDD exposure for any

Vietnam veteran, there were possible and plausible routes for exposure of Blue Water Navy personnel.

### **Deceptions of Deep Concern**

One of the more disturbing things about this issue is the stream of misinterpretations and deceptive statements the DVA has given in its reports to Congress and the American people. They have gone out of their way to release so many manipulated interpretations of the IOM reports that one veteran's advocacy group, the Blue Water Navy Vietnam Veterans Association (BWNVVA), has been calling for a Congressionally-based public censure of the agency for nearly a year. <<http://bluewaternavy.org/publiccensure.htm>>

By law, through the Agent Orange Act of 1991, the DVA was required to assume that anyone within the Vietnam Theater of Combat who shows symptoms of diseases related to Agent Orange/Dioxin was exposed to herbicide and was to receive medical and financial veteran benefits administered by the DVA. The VA complied with that legislation until 2002, when they changed their internal regulations to eliminate eligibility for anyone who did not have their "boots on the ground" within the borders of Vietnam or on its nearby islands off the eastern and western coast of the Mekong Delta<sup>3</sup>. It was originally the DVA that specified that being in the Theater of Combat, as evidenced by earning the Vietnam Service Medal, was the legitimate interpretation of the 1991 Agent Orange Act. A change in their 'interpretation' of the intent of Congress 11 years after the fact is more likely driven by financial concerns than by legal or rational concerns, especially when that change flies in the face of the accumulated facts.

In addition to the conclusions of the IOM, including their statement from Update: 2008 that "...there is little reason to believe that exposure of US military personnel to the herbicides sprayed in Vietnam was limited to those who actually set foot in the Republic of Vietnam...", The BWNVVA has diligently and deeply analyzed the existing documentation and has reached similar conclusions of its own. In a series of three extensive studies, the BWNVVA has concluded:

- There is "logical and robust medical and scientific data that begs acknowledgment by the DVA of the inevitable exposure of offshore personnel to the illnesses related to exposure to herbicides and their contaminants [especially] when they were situated in Da Nang Harbor;<sup>4</sup>
- "In this analysis of the probability of contamination of the aircraft carriers offshore Vietnam, a careful scientific analysis of the conditions determined a 100% feasibility of contaminants from the atmosphere being carried back to the carriers once their airplanes entered the airspace above South Vietnam. Therefore, those who served aboard Task Force 77 aircraft carriers in the Vietnam War ... should receive the same DVA consideration for medical care and disability support as those who were in-country with boots-on-ground."<sup>5</sup>
- The latest study of offshore Vietnam veterans concludes: "[t]heir exposure came by sea through the contamination of the on-board water systems. The ship's evaporators took sea water already tainted with toxins from drainage and runoff

into the bays and harbors and eventually to sea and greatly increased the toxicity levels [of the Dioxin]. It came by air via the spray drift and the contaminated particles that electrostatically clung to the carrier-based aircraft during bombing missions. And it came from land by way of the massive amounts of contaminated dirt and dust delivered both directly on materials and personnel who travelled from Da Nang and other Vietnam shore locations to the ships, and by the particle suspension brought to the fleet by the prevailing atmospheric conditions including the west to east weather patterns.”<sup>6</sup>

### **What Needs to be Done?**

If Americans are ever going to solve the problems of veteran disrespect and mistreatment by the Department of Veterans Affairs which currently is occurring in epidemic proportions, from denial of benefits for older veterans to inept handling of newer veteran problems like claim backlogs and unprecedented suicide rates of the men and women returning from Iraq and Afghanistan, the public is going to have to step forward with a unified voice and demand change. Change will not come about on its own and not without pushing hard on our elected officials. And if anyone thinks that these problems are trivial compared to items like the national budget and partisan bickering over health care and taxes, they had best stop and think again. Without the military forces that protect our freedoms, like our current ability to continue to operate in a Representative Democracy, the general public will no longer have a say in how this country is run. The surviving members of our military become our veteran population.

Every individual of voting age needs to please immediately contact their Senators and Representatives <http://www.contactingthecongress.org/> and tell them that HR-543, The Blue Water Navy Vietnam Veterans Act, must immediately be passed by the House and forwarded to the Senate. If you don't all act now, you bring the possibility of not being able to act in the future one step closer to reality.

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### **FOOTNOTES:**

<sup>1</sup> The “Agent Orange Update” is a congressionally mandated, bi-annual report typically published the year following its title date.

<sup>2</sup> In May, 2008, the U.S. Court of Appeals for the Federal Circuit ruled in the VA’s favor in ‘Haas vs. Peake’ on the question of the Agency’s right to interpret and change its own internal regulations. This ruling was given under Chevron Deference, which requires a reasonable basis for any such change. However, in this instance, that element of the Deference seems to have

been ignored. The VA argued in court that the herbicide was sprayed by various military units over the land onto the vegetation, and they had no idea how any AO/D could have gotten into the water in near-shore and off-shore locations. They failed to ask a Fourth Grade Science class about the Earth's water cycle.

<sup>3</sup> The VA Project 211 was set up to identify Blue Water Navy ships that ventured onto the Internal Waterways of Vietnam and Blue Water Navy ships whose crewmembers had their boots on ground in Vietnam. Over 250 such ships have been identified, representing approximately 100,000 Blue Water Navy personnel now considered to be 'other than Blue Water Navy'. Among these, there are 10 ships recognized for crew being ashore in An Thoi (Phu Quoc Island) and 2 ships recognized for crew being ashore on Con Son Island.

<sup>4</sup> "The Da Nang Harbor Report," April, 2011, [www.bluewaternavy.org/danangcombo2.pdf](http://www.bluewaternavy.org/danangcombo2.pdf)

<sup>5</sup> "Dioxin On The Carriers," February, 2012, [http://www.bluewaternavy.org/DIOXIN ON THE CARRIERS2.pdf](http://www.bluewaternavy.org/DIOXIN_ON_THE_CARRIERS2.pdf)

<sup>6</sup> "A Re-Analysis of Blue Water Navy Veterans and Agent Orange Exposure," June, 2013, [www.bluewaternavy.org/ReIOM.htm](http://www.bluewaternavy.org/ReIOM.htm)

5. The VA has purposely deceived the Congress and the American public on statements made by the IOM.

# **BLUE WATER NAVY ASSOCIATION CALLS FOR PUBLIC CENSURE OF THE DVA**

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The Blue Water Navy Vietnam Veterans Association, a national non-profit veteran assistance organization, believes the Department of Veterans Affairs (DVA) should be called to task for Notice Citation 77 FR 76170 which appeared in the Federal Register on December 26, 2012.

This Notice, titled “Presumption of Exposure to Herbicides for Blue Water Navy Vietnam Veterans Not Supported,” is disingenuous at best and is a blatant distortion of facts and an intentional misrepresentation of the Institute of Medicine Study of May 11, 2011, which the Notice references.

We are calling for a public censure of DVA because of their obviously misleading statements.

The DVA has been following a path of deceit and dishonesty towards the Congress and the American public for too many years and it is time that this behavior is stopped and those responsible be held accountable. No other Agency of our Government can get away with such overt disregard for the American judicial system and the principles of honest and forthright operation. The DVA should no longer be allowed to do this.

The original request for the study asked the IOM to determine “whether Blue Water Navy Vietnam Veterans experienced exposures to herbicides and their contaminants (focusing on dioxin) comparable to those of ground troops and Brown Water Navy Vietnam Veterans.” Although the IOM found that quantitative measurements needed to accomplish this task simply did not exist for any of the three groups, the mere concept of exposure comparison would be holding the Blue Water Navy to a different standard of criteria than is afforded to the ground troops and Brown Water Navy veterans.

Brown Water and ground troop veterans receive their VA health care and compensation benefits through the ‘presumption of exposure.’ Those veterans are not required to show any element of ‘comparable exposure’ to other Vietnam veterans. They just need ‘to have been there.’ The basic inability to show a marked distinction between the exposure level of one individual or group against another was clearly known as far back as 1991, when the concept of presumptive exposure was adopted by Congress. No analysis, investigation or report since that time has yet been able to provide evidence to move away from the concept of presumption. Although they were included in the 1991 Agent Orange Act, the DVA denies the presumption of exposure to Blue Water Navy Vietnam Veterans since 2002.

DVA combines two out-of-context thoughts from the IOM Study and presents them as if they were concurrent conclusions. But they each give only one-half the story.

1) DVA states, “...the IOM concluded that ground troops and Brown Water Navy Veterans had qualitatively more pathways of exposure to Agent Orange-associated TCDD than did Blue Water Navy Veterans.”

The IOM additionally states, "... the committee concluded that it could not state with certainty that exposures to Blue Water Navy personnel, taken as a group, were qualitatively different from their Brown Water Navy and ground troop counterparts."

2) DVA reports, "...[the IOM] concluded that there is insufficient evidence to determine whether Blue Water Navy Veterans were exposed to Agent Orange-associated herbicides during the Vietnam War."

The IOM adds "This lack of information makes it impossible to quantify exposures for Blue Water and Brown Water Navy sailors and, so far, for ground troops as well."

These two instances where the DVA intends to show a marked distinction between the Blue Water Navy and the other veterans of the Vietnam War are actually two areas where the IOM Reports places Blue Water Navy personnel on an equal footing with ground troops and Brown Water Navy personnel regarding "exposures to herbicides and their contaminants (focusing on dioxin)"... the exact opposite of what the DVA intended to show. But anyone unfamiliar with the details of the IOM Report of May 2011 would not spot this verbal chicanery.

We invite you to join with us as we call upon the Veteran Affairs Committees of both the House and the Senate to move forward with the public censure of the Department of Veterans Affairs.

Additional details can be found through the links below.

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[Link to the Federal Register Notice](#)

IOM Report [Blue Water Navy Vietnam Veterans and Agent Orange Exposure](#)

[Some Brief Background](#)

[About 1\) DVA quotation](#)

[About 1\) IOM quotation](#)

[About 2\) DVA quotation](#)

[About 2\) IOM quotation](#)

**RETURN TO [News Page](#)**

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## **SOME BRIEF BACKGROUND**

In 2009, the Department of Veterans Affairs (DVA) tasked the Institute of Medicine (IOM) to perform a study to determine if they could show that personnel who served offshore Vietnam (Blue Water Navy) between 1962 and 1975 were exposed to the dioxin in Agent Orange to the same extent and degree as those who served on land or on the Inland Waterways of Vietnam (Brown Water Navy). DVA stipulated a time frame of 18 months for delivery. The conclusions of that study were foregone and well-predicted. Similar studies on Agent Orange exposure had been conducted, all with the same result: without data from that time period, all that could result was speculation. Additionally, for the first time, they were asking for comparative information between an imaginary division of the veterans who served in the Vietnam War.

When the Department of Veterans Affairs (DVA) was initially told to write the rules for adjudicating a disability claim for presumption of exposure to herbicide in Vietnam, as ruled by the Agent Orange Act of 1991, they assumed that everyone within the Theater of Combat was eligible for presumptive exposure, making the receipt of the Vietnam Service Medal (VSM) the qualifying factor for identifying the exposed population. The VSM was awarded to all military personnel who served within the Theater of Combat designated for the Vietnam War, which extended out to into the Gulf of Tonkin and the South China Sea. This specific detail of including the VSM was not mandated by Congress; it was what the Veteran Benefits Administration concluded was a valid parameter when writing the rules in the M-21 guidance manual for rating disability claims. Presumption then included ground troops, inland water (Brown Water) personnel, and offshore (Blue Water) personnel as having equal possibility of exposure. And that rule held firm for 11 years, until the DVA, in 2002, made an internal change to their guidance manual to restrict disability benefits related to diseases acknowledged to stem from exposure to Agent Orange dioxin only to those who had their boots-on-the-ground. When they made that change, they did not follow the established law that required them to first notify Congress and the American public of their intention to make that change. It was done illegally. During the court trials between 2006 and 2008, the VA was allowed to cover their tracks and make that decision retroactively legal. But that will never change the fact that removal of Blue Water Navy veterans from the eligibility for Health Care and Disability Compensation benefits related to dioxin poisoning was an illegal act of the DVA.

Few veterans that I know were totally surprised by the 2011 IOM Study conclusions. The attempts to clearly define a standard of exposure for any veteran, whether on land or at sea, had failed in every study from 1980 through 1990. The aftermath could be measured. The symptoms of the dioxin-caused diseases could be enumerated and categorized. But nothing could be definitively stated about actual dosages of exposure to dioxin. That is why, in 1991, The Agent Orange Act used the concept of presumptive exposure. It basically meant, "We assume that every veteran of the Vietnam War had an equal probability of being exposed to Agent Orange as every other veteran." This was not a certainty, but a probability. The problem arose in the definition of where "there" was.

Early into this recent Study, the IOM Committee found itself faced with the serious limiting factor: no useful

measurements on the amounts of Agent Orange throughout the entire Vietnam environment were ever made. No measure of atmospheric saturation, or presence in the water, or concentration levels for any particular area of the country existed. They were simply not documented. This lack of facts and measurements that would allow a quantitative, scientific approach to assessing levels of exposure to Agent Orange dioxins in Vietnam meant that the IOM Study could never reflect any quantitative values. Only measurable, provable, numeric data can underlie a valid scientific study. So an extremely important shift was made in the work that could be accomplished by the IOM Committee, as they clearly stated in their Preface to the Report titled Blue Water Navy Vietnam Veterans and Agent Orange Exposure: "...the committee could not find enough data to determine whether or not Blue Water Navy personnel were exposed to Agent Orange-associated TCDD." This does not say they were not exposed. It says the Committee could not state a measured amount to which they were exposed. And that applied to every veteran of the Vietnam War, regardless of where they were or what they did.

Rather than a quantitative analysis, the Committee was forced to make a qualitative analysis. Without numbers and measurable data, they could only comment on descriptions and observations based on assessments (without scientific measurement) made by others in the past, or what could be observed in the present, some 48 years after the Ranch Hand spray missions started. Everything they could reference in their Study was the result of personal or group assessment of possibilities. Nothing they could reference in their study was the result of comparative measurements of anything.

One step further away from possible contamination was taken. The Committee was forced to fall back to speaking of PLAUSIBILITY. As opposed to having a statistical chance of happening, something is plausible even if it only seems to be reasonable or probable at the time a conclusion is drawn. If something is possible, it might be true. If something is plausible, it sounds like it might be true, given unbounded parameters. Plausible refers to an argument or explanation, whereas possible is based on a statistical chance. Ordering this study by the IOM, the DVA did nothing more than buy themselves 18 months to avoid dealing with this issue, and time to form future plans to continue their avoidance. The conclusions of the IOM are not being called to task; there is no fault of the Committee when the evidence to make an assessment was simply and absolutely not available.

And so no reader should ever be under the illusion that the IOM Committee made a conclusion based on scientific fact. They stated that they could not and did not do that. They acknowledged the limitations of their knowledge and ability, clearly saying they did not have the resources that allowed them to make a definitive conclusion. They clearly tell us that the best they can do is provide an opinion based on probability and plausibility, not on fact. And they clearly state that this lack of certainty of exposure to herbicide applies just as strongly to the individuals that served on land and on the Inland Waterways; there is no data to provide certainty of any Vietnam veteran's exposure to herbicide, and there is definitely no way to make a comparative statement about the level or measurement of exposure between those who served on land and those who served at sea.

Additionally, the Committee presents their conclusion only in terms of the Blue Water Navy personnel taken as a group, and never takes up the question of any specific individual or subgroup having the possibility of a

**higher contamination by herbicides where the probability of herbicide exposure was much greater and more probable, such as being on a ship anchored in Da Nang Harbor.**

**To read the conclusions of the DVA in their analysis of the IOM Study speaks volumes about the DVA's ability to comprehend the deep and detailed elements related to dioxin poisoning, and of the limitation of their expertise in comprehending the very topic they are charged with addressing. Alternatively, their conclusion calls into question their intention to honestly explain to the American public and to Congress the actual message presented to them by their own panel of experts. I believe only one of two conclusions can be drawn. If this was not an intentionally dishonest release meant to deceive the readers, then we have an agency incapable of assessing the material they were originally established to comprehend and act on. We are either dealing with ignorance or deceit. I fail to see any third alternative. And since they were operating under the tight thumb of the White House through the past several Administrations, then we are probably dealing with both.**

**The Congress needs to make their own conclusion and deal with every individual involved with the preparation of DVA Notice Citation 77 FR 76170 in an appropriate manner.**

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**Return to [Call For Public Censure](#)**

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6. Blue Water Navy personnel need to be considered as veterans who have been waiting 14 years for their VA Health Care appointments, far surpassing the wait time of veterans in the Phoenix VA Hospital and elsewhere.

### **30,000 Veterans Died Waiting for VA Action**

The current focus on the VA is actually a distraction from the VA's worst problems, which exist in the Compensation Division. If investigative news teams ever get wind of those problems, they'll certainly have a full-time job reporting amazing stories of anti-veteran attitudes and adversarial confrontations. The current focus is on veterans who were accepted into the VA system, many with service-connected injuries and diseases. And reportedly they have been waiting for many months or years for treatment. As bad as that is, it doesn't hold a candle to the magnitude of atrocity that has befallen Blue Water Navy Vietnam veterans.

In 2002, the Department of Veterans Affairs (DVA/VA) Compensation Division rescinded the health care and compensation benefits of certain Vietnam veterans. Originally, full benefits for herbicide poisoning were granted to all Vietnam veterans who served within the Theater of Combat by the Agent Orange Act of 1991. But since the 2002 rescission, more than 30,000 Navy and Fleet Marine veterans who served offshore Vietnam during that War have died. The Blue Water Navy Vietnam Veterans Association, currently challenging the VA for re-instatement of their benefits, estimates that as many as 15,000 of those veterans died from Agent Orange/dioxin-related complications.

In February, 2002, 11 years after the unanimous passage of the Agent Orange Act, the VA redefined a "Vietnam veteran" as someone who "must have actually served on land within the Republic of Vietnam (RVN) to qualify for the presumption of exposure to herbicides." The most infamous herbicide, Agent Orange, contained dioxin which the VA acknowledges causes several types of cancers, Parkinson's disease, ischemic heart disease, and other serious illnesses.

"Without those basic benefits," says John Paul Rossie, Executive Director of the Association, "we estimate that the majority of those 15,000 veterans died in debt from having to pay for treatment of their own service-connected war injuries. Many of those veterans might have had their lives prolonged to a significant degree if they had been given the medical treatment automatically provided to all other veterans of the Vietnam War. They would certainly have died under more humane conditions."

"We consider these 15,000 Blue Water Navy veterans to have been on a waiting list for the approval of their benefits since 2002," says Rossie. "And the VA left them to die as surely as if they had put a gun to their heads. These men not only endured the social stigma our country placed on their service in Vietnam; they were kicked to the curb a second time when the VA excluded them from acknowledgment of their service-connected injuries, and left them to die alone in the gutter. Of all the sins of Vietnam that this country is guilty of, this one is the most disgraceful. I find it deeply disturbing how the role of herbicides in Vietnam has been downplayed and written out of the history of that conflict. I think it's time for some correction of the history books regarding the devastation that our chemical warfare program caused. And every veteran in the Theater of Combat, whether on land or at sea, bore the brunt of that atrocity. Our Blue Water Navy Vietnam veterans are victims in a double sense. Their number needs to be added to the victims of VA neglect and mismanagement that have been brought to this country's attention in the recent months."

7. How many Blue Water Navy personnel served during the Vietnam War?

## How many Blue Water Navy personnel served in Vietnam?

The only consistent and continuously kept records of our fighting forces in Vietnam were kept by the Department of Defense which date from at least the mid-1960s through the early 1970s. Numbers from the DOD Manpower Reports are those that have been used in almost all historical data regarding military service during the Vietnam conflict.

Attached is the original DOD manpower report compilation done by the Defense Data Center. They are listed in a paper called Vietnam Conflict – Casualty Summary.

In February 2010, the Congressional Research Service prepared a Congressional Report which used the DOD Manpower Report as its sole source of this number. Although Navy personnel not stationed on the Blue Water Navy ships of the Seventh Fleet served in Vietnam in a number of capacities such as communication, watercraft training, and Brown Water Navy river patrols, we are using entire number of 174, 000 as the total number of Blue Water Navy sailors serving in South Vietnam.

Using the ratios provided by the Manpower Report, we can reach conclusions that should be applicable to other data regarding the number of Navy personnel who served in Vietnam:

8,744,000 personnel served during the entire Vietnam (VN) Era  
1,842,000 of the total VN Era veterans were in the Navy (21.1%)  
174,000 of the VN Era Navy were in Vietnam (9.45%)  
1.98993596% of all VN Era veterans were Blue Water Navy veterans. (0.0199)

2,594,000 personnel served in Vietnam during the Vietnam War  
174,000 of those personnel were offshore in the Blue Water Navy  
6.7% of Vietnam veterans were Blue Water Navy veterans.



# American War and Military Operations Casualties: Lists and Statistics

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## Summary

This report is written in response to numerous requests for war casualty statistics and lists of war dead. It provides tables, compiled by sources at the Department of Defense (DOD), indicating the number of casualties among American military personnel serving in principal wars and combat actions.

Wars covered include the Revolutionary War, the War of 1812, the Mexican War, the Civil War, the Spanish-American War, World War I, World War II, the Korean War, the Vietnam Conflict, and the Persian Gulf War. Military operations covered include the Iranian Hostage Rescue Mission, Lebanon Peacekeeping, Urgent Fury in Grenada, Just Cause in Panama, Desert Shield and Desert Storm, Restore Hope in Somalia, Uphold Democracy in Haiti, and the ongoing Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF).

For the more recent conflicts, starting with the Korean War, more detailed information on types of casualties, and, when available, demographics have been included. This report also cites sources of published lists of military personnel killed in principal wars and combat actions.

This report will be updated as events warrant.

**Table 8. Vietnam Conflict: Casualty Summary**

(as of May 16, 2008)

Casualty Type	Total	Army	Air Force	Marines	Navy
Killed in Action	40,934	27,047	1,080	11,501	1,306
Died of Wounds	5,299	3,610	51	1,486	152
Missing in Action—Declared Dead	1,085	261	589	98	137
Captured—Declared Dead	116	45	25	10	36
<b>Total Hostile Deaths</b>	<b>47,434</b>	<b>30,963</b>	<b>1,745</b>	<b>13,095</b>	<b>1,631</b>
Missing—Presumed Dead	123	118	0	3	2
Other Deaths	10,663	7,143	841	1,746	933
<b>Total Non-Hostile Deaths</b>	<b>10,786</b>	<b>7,261</b>	<b>841</b>	<b>1,749</b>	<b>935</b>
<b>Total In-Theater Deaths</b>	<b>58,220</b>	<b>38,224</b>	<b>2,586</b>	<b>14,844</b>	<b>2,566</b>
Killed in Action—No Remains	575	173	206	102	94
Missing in Action-Declared Dead—No Remains	691	201	339	74	77
Captured-Declared Dead—No Remains	52	32	7	3	10
Non-Hostile Missing-Presumed Dead—No Remains	91	86		3	2
Non-Hostile Other Deaths—No Remains	332	69	30	37	196
<b>Total—No Remains</b>	<b>1,741</b>	<b>561</b>	<b>582</b>	<b>219</b>	<b>379</b>
<b>Wounded—Not Mortal</b>	<b>153,303</b>	<b>96,802</b>	<b>931</b>	<b>51,392</b>	<b>4,178</b>
<b>Number Serving Worldwide<sup>b</sup></b>	<b>8,744,000</b>	<b>4,368,000</b>	<b>1,740,000</b>	<b>794,000</b>	<b>1,842,000</b>
<b>Number Serving Southeast Asia<sup>b</sup></b>	<b>3,403,000</b>	<b>2,276,000</b>	<b>385,000</b>	<b>513,000</b>	<b>229,000</b>
<b>Number Serving South Vietnam<sup>b</sup></b>	<b>2,594,000</b>	<b>1,736,000</b>	<b>293,000</b>	<b>391,000</b>	<b>174,000</b>

**Source:** Washington Headquarters Services, Directorate for Information Operations and Reports, <http://siadapp.dmdc.osd.mil/personnel/CASUALTY/vietnam.pdf>.

- a. Inclusive dates are November 1, 1955, to May 15, 1975. Casualty dates after the end date represent service members who were wounded during the period and subsequently died as a result of those wounds and those service members who were involved in an incident during the period and were later declared dead.
- b. Estimated figures.

# VIETNAM CONFLICT - CASUALTY SUMMARY

As of May 16, 2008

CASUALTY TYPE	TOTAL	ARMY	AIR FORCE	MARINES	NAVY
Killed in Action	40,934	27,047	1,080	11,501	1,306
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Killed in Action - No Remains	575	173	206	102	94
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<b>WOUNDED - NOT MORTAL</b>	<b>153,303</b>	<b>96,802</b>	<b>931</b>	<b>51,392</b>	<b>4,178</b>
<b>NUMBER SERVING WORLDWIDE**</b>	8,744,000	4,368,000	1,740,000	794,000	1,842,000
<b>NUMBER SERVING SOUTHEAST ASIA**</b>	3,403,000	2,276,000	385,000	513,000	229,000
<b>NUMBER SERVING SOUTH VIETNAM**</b>	2,594,000	1,736,000	293,000	391,000	174,000

\*Inclusive dates are November 1, 1955 to May 15, 1975. Casualty dates after the end date represent service members who were wounded during the period and subsequently died as a result of those wounds and those service members who were involved in an incident during the period and were later declared dead.

\*\*Estimated Figures

Prepared by: Defense Manpower Data Center

8. How can we determine and verify a headcount of the Blue Water Navy personnel who will benefit from the passage of HR-543?

## ESTIMATE OF BLUE WATER NAVY PERSONNEL IMPACTED BY HR-543

Number of Blue Water Navy who served offshore	174,000
2.3% of those died of NHL between 1962 and 2014	4,002
45.9% of those served on the 260+ ships now considered as Inland Water Personnel, covered under current VA funds	79,866
17.25% of those died between 1962 and 2014	30,015
13.8% of those died between 2002 and 2014	24,012
<b>Total Living BWN vets at the end of 2014</b>	<b>36,105</b>
<b>Total BWN vets estimated to file claim under HR-543</b>	<b>12,673</b>
Estimated Death Rate of all VN Era veterans/year	138,000
Estimated Death Rate of all VN Era veterans/day	380
Estimated Death Rate of Blue Water Navy vets/year	2,920
Estimated Death Rate of Blue Water Navy vets/day	8
Estimated Suicide Rate of all Veterans/day	25
More than 50% of those suicides are "older vets"	

9. What was the area defined as the Vietnam Theater of Combat?

