

Military-Veterans Advocacy

Written Testimony for the Record

Withdrawing Support for H.R. 299

And in support of:

HR 1199, HR 1200, HR 1126 and HR 1628

Submitted to the United States House of Representatives Disability and Memorial Affairs
Subcommittee of the Veterans Affairs Committee, May 1, 2019



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

Introduction

Distinguished Sub-Committee Chairperson Elaine Luria, Ranking Member Mike Bost other members of the Sub-Committee; thank you for the opportunity to present our organizations views on HR 299, HR 1199, HR 1200, HR 1126 and HR 1628. This testimony will provide commentary on all the proposed legislation but will concentrate on HR 299.

Withdrawal of Support for HR 299

As discussed further below, Military-Veterans Advocacy, after consultation with our board and the Blue Water Navy Vietnam Veterans Association, withdraws our support for the current language of HR 299 and the proposed Amendment in the Nature of a Substitute to HR 299 offered by Mr. Takano. Military-Veterans Advocacy and the Blue Water Navy Vietnam Veterans Association have been at the forefront of the fight to obtain benefits for the Blue Water Navy veterans. Military-Veterans Advocacy brought the case of *Procopio v. Wilkie*, 913 F.3d 1371 (Fed. Cir. 2019) in the Court of Appeals for the Federal Circuit. In a 9-2 decision, that *en banc* court ruled that the term “served in the Republic of Vietnam” included its territorial sea. MVA has coordinated the legislative and litigation efforts in support of the Blue Water Navy. We drafted the initial wording of the predecessor to HR 299 and furnished the now unnecessary coordinates that are included in this bill. Our social media outreach on behalf of the bill as well as meetings with numerous members, including yourself Madam Chairwoman, was a direct factor in obtaining the large number of co-sponsors for this bill and its predecessors. Our withdrawal of support should serve as a strong signal to this Subcommittee that the existing bill and the proposed amendment are defective. I note that both the Commander of the Blue Water Navy Vietnam Veterans Association and I are present at this hearing. Despite our request to testify, we were not granted that courtesy.

Our withdrawal of support should not be construed as an abandonment of Blue Water Navy veterans. The opposite is true. We believe that the current language of the bill, as well as the Takano amendment will lead to an unnecessary narrowing of the presumption of exposure recognized by the courts.

Currently we do not believe that HR 299 is necessary, although it is desirable to codify the main holding of *Procopio*. Inartful draftsmanship, however, could, and we believe will, result in some sailors being left behind. This is unacceptable.

Procopio provides a window of opportunity to codify the court’s decision without having to find an offset – at least for the Blue Water Navy portion. Some small discretionary costs may be required for medical treatment and of course there is approximately \$10 million required to cover the Korean DMZ and Thailand spina bifida descendants. Our position is that while the bill is desirable, a bad bill is worse than no bill at all. HR 299 in its current form is a bad bill.

MVA enthusiastically supports S 1195, sponsored by Senators Gillibrand and Daines and 32 other Senators and urges the Subcommittee to incorporate that language into HR 299.

The Commander Blue Water Navy Vietnam Veterans Association concurs with this assessment and the decision to withdraw support from HR 299 as written and the Takano Amendment. .

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. Our organization consists entirely of volunteers who do not draw a salary from MVA.

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 323 co-sponsors. A previous version passed the House unanimously in the 115th Congress but died in the Senate. The offset which still exists in this version of HR 299 was part of the reason it failed in the Senate.

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 the Blue Water Navy saga. 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, 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 veterans who served in the bays, harbors and territorial seas of the Republic of Vietnam. He is also recognized in the veteran's 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. Aircraft carriers, however, normally operated outside of the territorial sea. After 1967, most carriers were stationed at Yankee Station, in the Gulf of Tonkin, off the coast of North rather than South Vietnam. Although these carriers would sortie south, they often transited outside of the territorial sea.

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).

These regulations allowed the presumption of exposure throughout the Vietnam Service Medal area, the dark solid line marked on Exhibit 1.

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."

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. 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 was in effect until the *Procopio* decision.

Since 2008 various versions of the Blue Water Navy bill languished in Congress, often stymied by the Pay as You Go Act. After years of frustration, MVA and the Blue Water Navy Vietnam Veterans Association turned to the courts. Despite many years of discussion, it was the court who achieved these benefits for the Blue Water Navy benefits.

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, was nothing sort of abhorrent. The VA has accepted the court ruling in *Procopio* and Secretary Wilkie has repeatedly stated that he does not support or envision a petition for

certiorari to the Supreme Court of the United States. MVA applauds this decision and has pledged to work with the VA to assist with implementation.

Vietnam claims a 12-mile territorial sea and this limit was recognized by *Procopio*. . 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. It was confirmed again in Art. 1 of the 1973 Paris Peace Treaty which ended the Vietnam War. During the war, the United States recognized the Vietnamese 12 limit

In *Procopio*, the Federal Circuit held that the internationally recognized law recognized sovereignty over the twelve-mile territorial sea. Relying on the 1958 Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606, T.I.A.S. No. 5639 (Apr. 29, 1958); *United States v. California*, 381 U.S. 139, 165, 85 S.Ct. 1401, 14 L.Ed.2d 296 (1965) the United Nations Convention on the Law of the Sea, 1833 U.N.T.S. 397, 400 (Dec. 10, 1982) and the ” Restatement (Third) of Foreign Relations Law §§ 511, cmt. b, 512, cmt. a (1987), the *Procopio* court held that the twelve-mile territorial sea was within the scope of the “served in the Republic of Vietnam” phrase of the Agent Orange Act of 1991. *Procopio*, 913 F.3d 1375-76.

There are several methods of defining the territorial sea. One is the normal baseline which runs along the main coast. The other is the straight baseline method used to encompass chains of islands that run off the coast of the state.

Vietnam uses the direct baseline method to compute their territorial sea. 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 straight baseline method is recognized in international law and was incorporated into the *Procopio* decision. Both the 1958 Convention and UNCLOS allow states to use this method to mark the start of their territorial sea.

Article 4 § 1 of the Congressionally ratified 1958 Convention notes as follows:

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

Article 6 of the 1958 Convention goes on to say:

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

The United Nations on the Convention on the Law of the Sea (UNCLOS) takes a similar approach. Article 3 states as follows:

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

Article 7 § 1 goes on to say:

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

The geographic points in the current language of HR 299 and the proposed Amendment mirror the territorial sea. For this reason, in light of *Procopio*, they are unnecessary and should be removed. We have discussed this matter with Secretary Wilkie and provided him copies of the treaty and the analysis. Any attempt to limit the breadth of the territorial sea would be subject to litigation and MVA believes that such limitation would fail. Our co-counsel agrees.

Waters Offshore post *Procopio*

In a previous version of HR 299, MVA supplied the HVAC the geographic points found in the legislation. Due to State Department concerns about the term “territorial sea” the Committee, in consultation with MVA, decided to use the term “waters offshore.” At the time this made sense. In the wake of *Procopio*, however, it no longer does. As for the State Department’s long-standing objection to the Vietnamese claim, *Procopio* has made their protest moot, at least as it applies to veterans’ law.

Procopio actually went further than defining the territorial sea. It also addressed the issue of “waters offshore.” In doing so, it opened an opportunity to include ships, mostly aircraft carriers, under the presumption umbrella.

38 C.F.R. states in pertinent part:

Service in the Republic of Vietnam' includes service in the waters offshore *and* service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.” (Emphasis added).

Procopio stopped short of defining “waters offshore.” What it did settle is that “waters offshore” extend beyond the territorial sea. The *Procopio* majority noted:

As the government concedes, the “waters offshore” are broader than the territorial sea. *See* Oral Argument at 55:08–55:19 (government’s counsel acknowledging offshore waters “can also include beyond the territorial seas”); *id.* at 55:40–56:10 (government’s counsel confirming offshore waters extend beyond the territorial sea); *cf. id.* at 2:00–2:16 (Mr. Procopio’s counsel stating “[t]he offshore water is broader than the territorial sea ... and it’s an important difference because a nation is sovereign only in its territorial sea.”). Regulation 311’s requirement of “duty or visitation in the Republic of Vietnam” brings within coverage only a subset of all those who served “offshore,” namely, those whose service included presence on land, in the inland waterways, or in the territorial sea, consistent with international law.

Procopio v. Wilkie, 913 F.3d at 1377.

This point is buttressed by the unique Non-Hodgkin’s Lymphoma requirement of 38 C.F.R. § 3.313. The *Procopio* majority read this provision *in para materia* with § 3.311 and concluded as follows:

No fair reading of § 1116 can exclude the very veterans suffering from Non-Hodgkin’s lymphoma that were entitled to Regulation 313’s presumption, yet the government’s (and the dissent’s) reading does just that: According to the government, a veteran with Non-Hodgkin’s lymphoma who served in the Republic of Vietnam’s territorial sea would have been entitled to service connection under Regulation 313, but this same veteran would not be entitled to service connection under § 1116. This cannot be right. We decline to read § 1116, as the dissent urges, to both codify Regulation 313 and erode that regulation’s coverage. We see no basis to conclude that Congress chose to reduce the scope of service connection for Non-Hodgkin’s lymphoma without explanation.

Procopio v. Wilkie, 913 F.3d at 1378.

Notably, Judge Lourie, in his *Procopio* concurrence felt that 38 U.S.C. § 1116 was ambiguous. He argued that regulation 38 C.F.R. § 3.307 is not ambiguous and that its plain meaning encompasses “waters offshore” as within the meaning of “service in the Republic of Vietnam” and entitled to presumptive service connection. *Procopio v. Wilkie*, 913 F.3d at 1381 (Lourie, J concurring). In other words, Judge Lourie reached the same conclusion by a different path. In doing so, he has opened the door to expanding the presumption to ships operating outside of the territorial sea. While the courts will determine the limitations of “waters offshore,” and

certainly a limitation should be drawn, Congress needs to take care that it does not limit the term to the currently accepted territorial sea. At a minimum we believe that “waters offshore” extends through the contiguous zone. The contiguous zone is a belt of water extending another 12 miles from the territorial sea. It probably extends further. But what it will do is encompass several carriers not included in the territorial sea.

Hydrologists tell us that the discharge plume of the Mekong River extends “several hundred kilometers” into the South China Sea. Assuming “several hundred” means 300+ then the plume would extend at least 161.987 nautical miles from the mainland. We know from a New Jersey environmental study, that dioxin from an Agent Orange spill in the Passaic River was found in seafood 150 nautical miles from shore. At its widest point, the territorial sea was approximately 90 nautical miles from the mainland. Accordingly, it would be fair to assume that the “waters offshore” extends 60 nautical miles from the territorial sea or 72 nautical miles from the baseline.

We currently have a suit pending in the Court of Appeals for Veterans Claims which addressed this issue. The veteran’s ship, an aircraft carrier, appears to be slightly outside the territorial sea, although we are still tracking its various transits. The VA has already conceded, however, that the ship was in “waters offshore.” We believe we have a strong argument to cover this carrier as long as the Congress does not define “waters offshore” as in the current version of HR 299.

While no court has yet accepted the theory delineated in the previous paragraph, we do intend to litigate the issue. Based on *Procopio*, they should, extend the presumption for some distance. But they will accept none of it if Congress passes a bill limiting the term “waters offshore” to the geographic points that make up the territorial sea. That is the current language of HR 299.

MVA notes that the Takano Amendment does delete the term “waters” from “waters offshore.” This appears to have been an inadequate attempt to address our concerns. This merely inserts a third term into the controversy which will open the door to a finding of ambiguity. Should a court find this wording ambiguous, as they must, it will allow them to move to step two in the *Chevron* analysis, where they are required to give “great deference” to agency interpretation. Our *Procopio* co-counsel agrees.

Procopio has given us the opportunity to cover carriers operating outside of the territorial sea that were no doubt exposed to the dioxin. This opportunity will be lost forever if Congress defines waters offshore by using the last years language. The courts will look at the law and proclaim that “Congress has spoken.” We cannot afford that. Thousands of sailors will be left behind.

Stay of Proceedings

The *Procopio* mandate issued on March 22, 2019. Stays of Blue Water cases have been lifted in the Court of Appeals for Veterans Claims and the Board of Veterans Appeals. The VA is moving forward with implementation. There is no need to build a delay mechanism into this bill

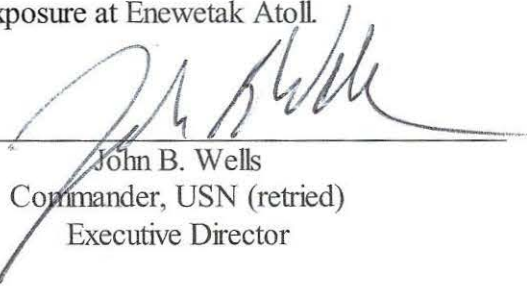
for Blue Water Navy veterans.

Conclusion concerning HR 299

MVA regretfully but firmly withdraws its support for HR 299 and the Takano Amendment as written. We will gladly restore our support should HR 299 be amended to reflect the language contained in S 1195 (attached as Exhibit 2). MVA has consulted with Senators Gillibrand and Daines, the lead sponsors of S 1195 and wholeheartedly supports the passage of that bill.

HR 1199 HR 1200 HR 1126 HR 1628

MVA strongly supports HR 1199, HR 1200 HR 1126 and HR 1628 with the following caveats. HR 1200 should be amended to allow for automatic annual increases. HR 1628 is an excellent start; however, the matter must not end with a study. We must move forward to provide compensation to the victims of radiation exposure at Enewetak Atoll.



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

116TH CONGRESS
1ST SESSION

S. _____

To amend title 38, United States Code, to clarify presumptions relating to the exposure of certain veterans who served in the vicinity of the Republic of Vietnam, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. GILLIBRAND (for herself and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title 38, United States Code, to clarify presumptions relating to the exposure of certain veterans who served in the vicinity of the Republic of Vietnam, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Blue Water Navy Viet-
5 nam Veterans Act of 2019”.

1 **SEC. 2. CLARIFICATION OF PRESUMPTIONS OF EXPOSURE**
2 **FOR VETERANS WHO SERVED IN VICINITY OF**
3 **REPUBLIC OF VIETNAM.**

4 (a) COMPENSATION.—Subsections (a)(1) and (f) of
5 section 1116 of title 38, United States Code, are amended
6 by inserting “(including the territorial seas of such Repub-
7 lic pursuant to the maximum extent authorized by inter-
8 national law)” after “served in the Republic of Vietnam”
9 each place it appears.

10 (b) HEALTH CARE.—Section 1710(e)(4) of such title
11 is amended by inserting “(including the territorial seas of
12 such Republic pursuant to the maximum extent authorized
13 by international law)” after “served on active duty in the
14 Republic of Vietnam”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 subsections (a) and (b) shall take effect as of September
17 25, 1985.

18 **SEC. 3. PRESUMPTION OF HERBICIDE EXPOSURE FOR CER-**
19 **TAIN VETERANS WHO SERVED IN KOREA.**

20 (a) IN GENERAL.—Chapter 11 of title 38, United
21 States Code, is amended by inserting after section 1116
22 the following new section:

23 **“§ 1116A. Presumption of herbicide exposure for cer-**
24 **tain veterans who served in Korea**

25 **“(a) PRESUMPTION OF SERVICE-CONNECTION.—(1)**
26 **For the purposes of section 1110 of this title, and subject**

1 to section 1113 of this title, a disease specified in sub-
2 section (b) that becomes manifest as specified in that sub-
3 section in a veteran described in paragraph (2) shall be
4 considered to have been incurred or aggravated in the line
5 of duty in the active military, naval, or air service, not-
6 withstanding that there is no record of evidence of such
7 disease during the period of such service.

8 “(2) A veteran described in this paragraph is a vet-
9 eran who, during active military, naval, or air service,
10 served in or near the Korean Demilitarized Zone (DMZ),
11 during the period beginning on September 1, 1967, and
12 ending on August 31, 1971.

13 “(b) DISEASES.—A disease specified in this sub-
14 section is—

15 “(1) a disease specified in paragraph (2) of
16 subsection (a) of section 1116 of this title that be-
17 comes manifest as specified in that paragraph; or

18 “(2) any additional disease that—

19 “(A) the Secretary determines in regula-
20 tions warrants a presumption of service-connec-
21 tion by reason of having positive association
22 with exposure to an herbicide agent; and

23 “(B) becomes manifest within any period
24 prescribed in such regulations.

1 “(c) HERBICIDE AGENT.—For purposes of this sec-
2 tion, the term ‘herbicide agent’ has the meaning given
3 such term in section 1821(d) of this title.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 at the beginning of such chapter is amended by inserting
6 after the item relating to section 1116 the following new
7 item:

“1116A. Presumption of herbicide exposure for certain veterans who served in
Korea.”.

8 **SEC. 4. BENEFITS FOR CHILDREN OF CERTAIN THAILAND**
9 **SERVICE VETERANS BORN WITH SPINA**
10 **BIFIDA.**

11 (a) IN GENERAL.—Subchapter III of chapter 18 of
12 title 38, United States Code, is amended by adding at the
13 end the following new section:

14 **“§ 1822. Benefits for children of certain Thailand**
15 **service veterans born with spina bifida**

16 “(a) BENEFITS AUTHORIZED.—The Secretary may
17 provide to any child of a veteran of covered service in
18 Thailand who is suffering from spina bifida the health
19 care, vocational training and rehabilitation, and monetary
20 allowance required to be paid to a child of a Vietnam vet-
21 eran who is suffering from spina bifida under subchapter
22 I of this chapter as if such child of a veteran of covered
23 service in Thailand were a child of a Vietnam veteran who
24 is suffering from spina bifida under such subchapter.

1 “(b) SPINA BIFIDA CONDITIONS COVERED.—This
2 section applies with respect to all forms and manifesta-
3 tions of spina bifida, except spina bifida occulta.

4 “(c) VETERAN OF COVERED SERVICE IN THAI-
5 LAND.—For purposes of this section, a veteran of covered
6 service in Thailand is any individual, without regard to
7 the characterization of that individual’s service, who—

8 “(1) served in the active military, naval, or air
9 service in Thailand, as determined by the Secretary
10 in consultation with the Secretary of Defense, dur-
11 ing the period beginning on January 9, 1962, and
12 ending on May 7, 1975; and

13 “(2) is determined by the Secretary, in con-
14 sultation with the Secretary of Defense, to have been
15 exposed to a herbicide agent during such service in
16 Thailand.

17 “(d) HERBICIDE AGENT.—For purposes of this sec-
18 tion, the term ‘herbicide agent’ means a chemical in a her-
19 bicide used in support of United States and allied military
20 operations in Thailand, as determined by the Secretary in
21 consultation with the Secretary of Defense, during the pe-
22 riod beginning on January 9, 1962, and ending on May
23 7, 1975.”.

24 (b) CONFORMING AMENDMENT TO DEFINITION OF
25 “CHILD”.—Section 1831(1) of such title is amended—

1 (1) in subparagraph (B)—

2 (A) by striking “subchapter III of this
3 chapter” and inserting “section 1821 of this
4 title”; and

5 (B) in clause (i), by striking “section 1821
6 of this title” and inserting “that section”; and

7 (2) by adding at the end the following new sub-
8 paragraph:

9 “(C) For purposes of section 1822 of this
10 title, an individual, regardless of age or marital
11 status, who—

12 “(i) is the natural child of a veteran
13 of covered service in Thailand (as deter-
14 mined for purposes of that section); and

15 “(ii) was conceived after the date on
16 which that veteran first entered service de-
17 scribed in subsection (c) of that section.”.

18 (c) CLERICAL AMENDMENTS.—

19 (1) SUBCHAPTER HEADING.—The heading for
20 subchapter III of chapter 18 of such title is amend-
21 ed by inserting “AND THAILAND” after
22 “KOREA”.

23 (2) TABLE OF SECTIONS.—The table of sections
24 at the beginning of chapter 18 of such title is
25 amended—

1 (A) by striking the item relating to sub-
2 chapter III and inserting the following new
3 item:

“SUBCHAPTER III—CHILDREN OF CERTAIN KOREA AND THAILAND SERVICE
VETERANS BORN WITH SPINA BIFIDA”;

4 and

5 (B) by inserting after the item relating to
6 section 1821 the following new item:

“1822. Benefits for children of certain Thailand service veterans born with spina
bifida.”.

7 (d) REPORT.—Not later than 180 days after the date
8 of the enactment of this Act, the Secretary of Veterans
9 Affairs, in consultation with the Secretary of Defense,
10 shall submit to the Committees on Veterans’ Affairs of
11 the House of Representatives and the Senate a report
12 identifying—

13 (1) the military installations of the United
14 States located in Thailand during the period begin-
15 ning on January 9, 1962, and ending on May 7,
16 1975, at which an herbicide agent (as defined in sec-
17 tion 1822 of title 38, United States Code, as added
18 by subsection (a)) was actively used; and

19 (2) the period of such use.

20 **SEC. 5. UPDATED REPORT ON CERTAIN GULF WAR ILLNESS**
21 **STUDY.**

22 Not later than 180 days after the date of the enact-
23 ment of this Act, the Secretary of Veterans Affairs shall

1 submit to the Committees on Veterans' Affairs of the
2 House of Representatives and the Senate an updated re-
3 port on the findings, as of the date of the updated report,
4 of the Follow-up Study of a National Cohort of Gulf War
5 and Gulf Era Veterans under the epidemiology program
6 of the Department of Veterans Affairs.