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Hurricane Katrina: DOD Disaster Response

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Steve Bowman
Specialist in National Defense
Foreign Affairs, Defense, and Trade Division

Lawrence Kapp
Specialist in National Defense
Foreign Affairs, Defense, and Trade Division

Amy Belasco
Specialist in National Defense
Foreign Affairs, Defense, and Trade Division

Hurricane Katrina: DOD Disaster Response

Summary

The issue that has received the most attention in post-Katrina discussions is the speed of rescue and relief operations. The Department of Defense's (DOD's) Northern Command began its alert and coordination procedures before Katrina's landfall; however, many deployments did not reach the affected area until days later. An examination of the timeline of DOD's response and the decision points along that timeline could provide insight into whether the response could have been accelerated given the intensity of the storm and the extent of the destruction. Both the National Response Plan and DOD's own Homeland Security Doctrine lay out extensive procedures and specific decision points in an attempt to ensure an organized response to catastrophic incidents. It may now be necessary to examine those procedures and the actions of responsible authorities to determine whether procedural obstacles, administrative failures, or both delayed the arrival of needed resources in the affected area. The traditional assumption that the Department of Defense is the resource of last resort may also require re-examination.

As with most natural disasters, the role of the National Guard is critical in the maintenance of civil order, the provision of logistical support, and the coordination of rescue and relief effort. The National Guard's ability to respond through the Emergency Management Assistance Compact may be proven to have been exemplary, given the extent of regional destruction. Nevertheless, a number of issues may attract attention. The fact that the National Guard may act under state control or may be federalized and brought under command of active duty forces at the President's discretion creates a decision-point with political, cost, and coordination/command implications. It is not yet clear the extent to which, if any, these issues may have affected the speed and quality of response to Katrina. They do, however, present a core concern in the balance of state and federal control in disaster situations.

Another issue that has attracted significant attention is the question of whether the demands of overseas operations in Iraq and Afghanistan in any way affected the quality of response of both active duty and National Guard forces. Both DOD and the National Guard have denied any deleterious effect; however, there is some anecdotal evidence that equipment shortages among National Guard units and the non-availability of some active duty units could be attributed to overseas deployment activities. The National Guard's equipment levels and deployment policies may be of particular interest, given its dual responsibilities both domestically and overseas.

The Department Defense is currently preparing its Quadrennial Defense review (QDR) for submission to Congress in early 2006. In examining its roles, missions, and capabilities, it is likely that the controversies surrounding the federal response to Katrina will affect DOD's consideration of its responsibilities and its ability to execute them. Though Katrina was a natural disaster, many of its effects could be encountered in an intentional attack. Consequently, "lessons learned" from the Katrina experience may carry long-term relevance for DOD's civil support planning.

This report will be updated as events warrant.

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Hurricane Katrina: DOD Disaster Response

Introduction

The issue that has received the most attention in post-Katrina discussions is the speed of rescue and relief operations. The Department of Defense's Northern Command began its alert and coordination procedures before Katrina's landfall, however many deployments did not reach the affected area until days after. An examination of the timeline of DOD's response and the decision points along that timeline could provide insight into whether the response could have been accelerated given the intensity of the storm and the extent of the destruction. Both the National Response Plan and DOD's own Homeland Security Doctrine lay out extensive procedures and specific decision points in an attempt to ensure an organized response to catastrophic incidents. It may now be necessary to examine those procedures and the actions of responsible authorities to determine whether procedural obstacles, administrative failures, or both delayed the arrival of needed resources in the affected area. The traditional assumption that the Department of Defense is the resource of last resort may also require re-examination. This report examines the existing disaster response procedures for the Department of Defense and how they were implemented, the use of the National Guard and its relationship to active duty forces, funds appropriated to date, and then discusses issues that may receive congressional consideration

Organization of DOD Civil Support¹

Reinforcing a long-standing tradition, Homeland Security Presidential Directive-5 states:

The Secretary of Defense shall provide military support to civil authorities for domestic incidents as directed by the President or when consistent with military readiness and appropriate under the circumstances and the law. The Secretary of Defense shall retain command of military forces providing civil support. The Secretary of Defense and the Secretary [of Homeland Security] shall establish appropriate relationships and mechanisms for cooperation and coordination between their two departments.

In keeping with the National Response Plan (NRP) and the DOD Joint Doctrine on Homeland Security, DOD civil support is normally provided only when local, state, and other federal resources are "overwhelmed"; and it is requested by the Lead

¹ Prepared by Steve Bowman, Specialist in National Defense; Foreign Affairs, Defense, and Trade Division

Federal Agency responding to an incident or natural disaster.² This is a fundamental principle of DOD's approach to civil support: it is generally a resource of last resort.

The Secretary of Defense has the principal authority for DOD's provision of civil support. His office retains approval authority for all requests for assistance from civilian agencies and retains control of all DOD assets provided. In practice, the Office of the Assistant Secretary of Defense, Homeland Defense (ASD/HD) is delegated supervisory responsibility of the civil support mission area and coordination with the Department of Homeland Security.³ Within the DOD Joint Staff, civil support responsibilities reside with the Joint Director of Military Support.

U.S. Northern Command (NORTHCOM) has the operational responsibility for civil support for most of the United States. It carries out civil support missions with forces assigned as required from all the armed services, typically through the creation of a joint task force.⁴ NORTHCOM has a permanently assigned Joint Interagency Coordination Group comprising liaison officers from other DOD components and other federal agencies, including the Department of Homeland Security (DHS).

The official DOD term for civil support is Military Assistance to Civil Authorities, which is divided into three types of assistance:⁵

- Military Support to Civil Authorities (MSCA) generally consists of support during natural disasters, special security events (e.g., the Olympics), and man-made incidents (terrorism, oil spills) which have evoked a presidential or state emergency declaration.
- Military Support to Civilian Law Enforcement Agencies (MSCLEA) consists of support provided to a Lead federal Agency (e.g., Federal Bureau of Investigation, DHS) for activities such as counterterrorism and counterdrug operations and may include provision of equipment, training, or expert advice.
- Military Assistance for Civil Disturbances occurs when the President employs the armed forces to suppress insurrections, riots, or to assist the states in maintaining law and order. In these situations, the Lead Federal Agency supported by DOD is the Department of Justice.

The Army Corps of Engineers, however, does not fall under the supervision of the ASD(HD) or the Northern Command, despite providing extensive civil support from within DOD. It performs its emergency support activities primarily as an

² *National Response Plan*, Department of Homeland Security, Dec. 2004, p. 42; *Homeland Security*, Joint Publication 3-26, Department of Defense, Aug. 2, 2005, p. IV-1.

³ This is not the ASD/HD's sole mission area. The ASD/HD is also responsible for the Defense Critical Infrastructure Program, DOD domestic antiterrorism and force protection programs, installation preparedness, and DOD continuity of government programs, among others.

⁴ Civil support for incidents in Hawaii and the Pacific territories is provided by U.S. Pacific Command.

⁵ *DOD Joint Homeland Security Doctrine*, p. IV-4.

adjunct to its on-going mission of water navigation maintenance and flood control. (See also CRS Report RS22238: *New Orleans Levees and Floodwalls: Hurricane Damage Protection*, by Nicole T. Carter.)

Procedures for Obtaining DOD Civil Support⁶

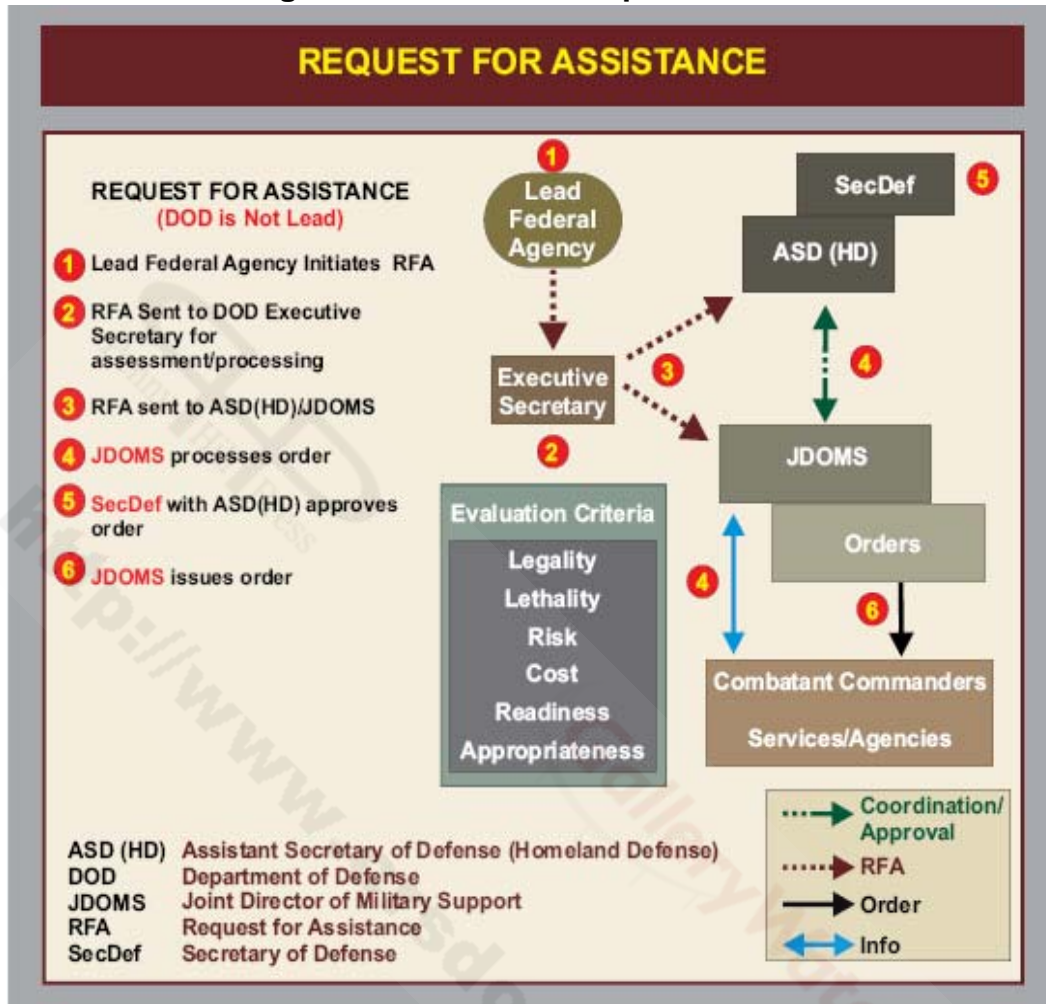
With the exception of circumstances discussed below, unless there is a specific direction from the President, requests for military assistance must originate from a Lead Federal Agency, typically the Federal Emergency Management Agency (FEMA), Department of Homeland Security. Requests are submitted to the Office of the Secretary of Defense, where they are evaluated by the ASD(HD) according to the following criteria: legality, readiness, lethality, risk, cost, and appropriateness.⁷ This is to be done on an expedited basis and, once the Secretary of Defense approves the requests, they are forwarded to the Joint Director of Military Support within the Joint Staff, who in turn provides the appropriate orders to Northern Command. (See Figure 1). A Defense Coordinating Officer (DCO) is designated and deployed to the area of the incident. In the case of Katrina, because of the size of the response required, a Joint Task Force (JTF-Katrina) was established with Lieutenant General Russel Honore, the DCO, as task force commander. The DCO then serves as the single point of contact for DOD resources for other government agencies operating in the incident area, but does not, however, have operational control over the U.S. Army Corps of Engineers or National Guard personnel operating in State Active Duty or Title 32 status (See, *Role of the National Guard*). The Corps of Engineers performs its emergency support under independent flood control authority (P.L. 64-99), but can and does assist both FEMA and JTF-Katrina under the National Response Plan.⁸

⁶ Prepared by Steve Bowman, Specialist in National Defense; Foreign Affairs, Defense, and Trade Division

⁷ Ibid. p. IV-12

⁸ For more information on Katrina-related Corps of Engineer activities, see CRS Report RS22238, *New Orleans Levees and Floodwalls: Hurricane Damage Protection*.

Figure 1. Assistance Request Procedures



Source: *Homeland Security*, Joint Publication 3-26, August 2005, Department of Defense

Within the National Response Plan, there are provisions for a “proactive federal response to catastrophic events.” These provisions are reserved for an event “that almost immediately exceeds resources normally available to State and local authorities.” These provisions are contained in the NRP’s Catastrophic Event Annex and can be implemented only by the Secretary of Homeland Security or his designee. Such events are to be designated Incidents of National Significance.⁹ The NRP specifies the following guiding principles for proactive federal response:

- The primary mission is to save lives; protect critical infrastructure, property, and the environment; contain the event; and preserve national security.
- Standard procedures regarding requests for assistance may be expedited or, under extreme circumstances, suspended in the immediate aftermath of an event of catastrophic magnitude.

⁹ *National Response Plan*, Dec. 2004, p. 43; Catastrophic Annex, p.1

- Identified Federal response resources will deploy and begin necessary operations as required to commence life-safety activities.
- Notification and full coordination with States will occur, but the coordination process must not delay or impede the rapid deployment and use of critical resources. States are urged to notify and coordinate with local governments regarding a proactive Federal response.
- State and local governments are encouraged to conduct collaborative planning with the Federal Government as a part of “steady-state” preparedness for catastrophic incidents.

Secretary of Homeland Security Chertoff did not declare Hurricane Katrina an Incident of National Significance until August 30, the evening after the hurricane made landfall, making a proactive federal response under the NRP moot.

In addition to the NRP’s provisions for a proactive federal response, the DOD Joint Homeland Security Doctrine also addresses instances when an “immediate response” is required of military commanders.

Responses to requests from civil authorities prior to receiving authority from the President or chain of command are made when immediate support is critical to save lives, prevent human suffering, or mitigate great property damage. When such conditions exist and time does not permit prior approval from higher headquarters, commanders or officials acting under immediate response authority may take necessary action to respond, but must advise the NMCC [National Military Command Center] through command channels by the most expeditious means available and seek approval or additional authorizations.¹⁰

In response to a FEMA request (based upon predictions of an unusually active hurricane season) Secretary Rumsfeld issued an order on August 20 which authorized NORTHCOM to deploy Defense Coordinating Elements (DCE) to FEMA’s East Coast and Gulf Coast administrative regions upon receipt of a written request from FEMA and the approval of the service secretaries affected.¹¹ According to the Secretary’s order, FEMA’s written request should specify the area affected, the installations requested for use as relief staging areas, funds obligated for DOD reimbursement, and the requested date and duration of deployment. Any FEMA request that required more than DCE deployment and use of installations would also have to be submitted to OSD and the Joint Staff for “processing, validation, and subsequent action by the Secretary of Defense.”

It appears that DOD, through NORTHCOM, began planning and actually deploying ships and personnel prior to receiving specific requests from the Department of Homeland Security or its subordinate, FEMA. NORTHCOM’s first responses to Katrina’s approach began the week prior to its August 29 landfall. On Wednesday, August 24, NORTHCOM issued its first warning orders to Regional

¹⁰ *DOD Joint Homeland Security Doctrine*, Aug. 2005, p. IV-3

¹¹ Defense Coordinating Elements are small units that serve as liaison between civilian and military authorities. “How the Pentagon Caught Katrina,” *U.S. News and World Report*, Sept. 26, 2005, p. 2.

Emergency Preparedness Officers, State Emergency Preparedness Officers, and the Senior Army Advisors (Guard) in the states expected to be affected. The governors of Louisiana and Mississippi declared states of emergency on August 26 and 27, respectively. President Bush declared a state of emergency for Louisiana on August 27 and NORTHCOM began to deploy the forward elements of what was to become Joint Task Force-Katrina (JTF-Katrina). On Monday, August 29, after Katrina made landfall, President Bush issued a federal declaration of catastrophic emergency, and on Tuesday, August 30, JTF-Katrina was officially activated. That evening, in response to levee breaches and consequent flooding in New Orleans, the DHS Secretary declared Katrina an Incident of National Significance. By Wednesday, August 31, DOD medical airlift operations from the affected area were underway, and the amphibious assault ship USS Bataan arrived off New Orleans.¹² On Thursday, September 1, the 82nd Airborne Division and 1st Cavalry Division were placed on alert. The 5,200 troops from these units began deploying on September 3 and arrived in the area on September 5. By September 6, a second amphibious assault ship, the *USS Iwo Jima* and the aircraft carrier *USS Truman* had also arrived. By September 7, DOD assets in the affected area included 42,990 National Guard personnel, 17,417 active duty personnel, 20 U.S. ships, 360 helicopters, and 93 fixed wing aircraft.¹³

Role of the National Guard¹⁴

The National Guard is descended from the colonial militias¹⁵ which existed prior to the adoption of the Constitution. With the adoption of the Constitution, the federal government acquired authority to organize, arm, and discipline the militia, and to call the militia into federal service in order to execute the laws of the Union, to suppress insurrection, and to repel invasion.¹⁶ Additionally, federal laws passed in the early 20th century designated part of the militia as the National Guard and transformed it into a federal reserve of the Army, enhancing federal authority over the Guard in

¹² A *Wasp* class amphibious assault ship like the USS Bataan resembles a small-aircraft carrier in appearance and typically embarks 2,000 U.S. Marines, a variety of transport helicopters, and has a 600 patient medical capacity.

¹³ U.S. Northern Command Press Release, Sept. 7, 2005.

¹⁴ Prepared by Lawrence Kapp, Specialist in National Defense, Foreign Affairs, Defense, and Trade Division

¹⁵ The colonial militia concept, which was derived from a longstanding English tradition and which required every able bodied white male to participate in the common defense of his town or locality, was the backbone of colonial military power. Gradually, as the colonial population grew and military threats waned, a distinction arose between the unorganized militia (those members of the militia who were potentially liable for military service but who did not actively participate in military training) and the organized militia (those members of the militia who regularly trained for war and who responded first to military threats).

¹⁶ See U.S. Constitution, Article I, Section 8, clauses 15 and 16, and Article II, Section 2, clause 1.

certain respects.¹⁷ As a result of this history, the National Guard is neither a purely state nor a purely federal organization. Rather, it is both a state and federal organization.

State Active Duty

Normally, the National Guard operates under the control of state and territorial governors.¹⁸ In response to disasters and civil disorders, governors can order National Guard personnel to perform full-time duty, commonly referred to as “state active duty.”¹⁹ In this state capacity, National Guard personnel operate under the control of their governor, are paid according to state law, can perform typical disaster relief tasks²⁰ and are not subject to the restrictions of the Posse Comitatus Act (that is, they can perform law enforcement functions).²¹

¹⁷ The most significant pieces of legislation in this transformation were the Dick Act of 1903, and the National Defense Acts of 1916, 1920, and 1933. Later, with the advent of the Air Force, the National Guard was organized into a land force (the Army National Guard of the United States) that was a federal reserve of the Army and an air force (the Air National Guard of the United States) that was federal reserve of the Air Force. They are distinct from the Army Reserve and the Air Force Reserve, which are purely federal entities, as are the Naval Reserve, Marine Corps Reserve, and Coast Guard Reserve. The Navy, Marine Corps, and Coast Guard have no National Guard components.

¹⁸ The National Guard of the United States is made up of 54 separate National Guard organizations: one for each state, and one each for Puerto Rico, Guam, the U.S. Virgin Islands, and the District of Columbia. While the District of Columbia National Guard is an exclusively federal organization and operates under federal control at all times, the other 53 National Guards operate as state or territorial organizations most of the time. In this capacity, each of these 53 organizations is identified by its state or territorial name (e.g., the California National Guard or the Puerto Rico National Guard), and is controlled by its respective governor.

¹⁹ Historically, this authority has been used most frequently in response to natural disasters such as hurricanes, earthquakes, forest fires, floods, etc. It has also been used to quell domestic violence and to control or disperse crowds. Additionally, in the aftermath of the September 11 terrorist attacks, a number of governors called up members of the National Guard to protect critical infrastructure in their states, such as nuclear power plants, water treatment facilities, and bridges, from potential terrorist attacks.

²⁰ For example, search and rescue, clearing roads, delivering supplies, and providing medical assistance.

²¹ The Posse Comitatus Act (18 U.S.C. 1385), along with other related laws and administrative provisions, prohibits the use of the military to execute civilian laws unless expressly authorized by the Constitution or an act of Congress. Congress has made a number of exceptions to the act which permit military involvement in law enforcement. For example, Congress has enacted a number of statutes which authorize the President to use military forces to suppress insurrections and domestic violence (10 U.S.C. 331-335). If these statutes were to be invoked, the President could use active or reserve components to put down a rebellion or to control domestic violence. Another important exception relates to the Coast Guard, which Congress has vested with broad law enforcement authority. Under these statutory provisions, the Coast Guard and Coast Guard Reserve can participate in the enforcement of maritime, customs, and certain other federal laws. For more

(continued...)

National Guard personnel called to assist with disaster relief operations for Hurricane Katrina were originally called to duty in a state active duty status by their respective governors. Interstate agreements allowed National Guard personnel from states outside the hurricane affected area to deploy to Louisiana and Mississippi and assist with disaster relief.²² By September 3, there were more out-of-state National Guard personnel serving in Louisiana and Mississippi than there were from those states' own National Guards. (See **Table 1** for a summary of National Guard force levels in Louisiana and Mississippi). In the early days of the relief operation, these out-of-state National Guard personnel remained on state active duty in their respective home states after arriving in Louisiana and Mississippi and received the pay and benefits provided by their home state's laws, but were placed under the operational control of the governors of Louisiana and Mississippi. Later, almost all of them were converted to Title 32 status (see below) and were therefore authorized federal pay and benefits.

In anticipation of the arrival of Hurricane Rita, the governor of Texas recalled the nearly 1,200 Texas National Guard personnel performing disaster relief duties in Louisiana on September 19; about 1,500 additional members of the Texas National Guard were ordered to duty over the next four days.²³ Several dozen out-of-state National Guard personnel have also joined in this operation. These individuals are serving in a Title 32 status (see below).

“Title 32” Status

Another way in which National Guard personnel can be activated and remain under the control of their governor is under the authority of 32 U.S.C. 502(f). This provision of federal law provides that “a member of the National Guard may...without his consent, but with the pay and allowances provided by law...be ordered to perform training or other duty in addition to [inactive duty for training or annual training].” The advantage of using this authority is that the National Guard personnel called will receive federal pay and benefits and are entitled to certain legal protections²⁴ as though they were in federal service, but they remain under the control

²¹ (...continued)

information on the Posse Comitatus Act, see CRS Report RS20590, *The Posse Comitatus Act & Related Matters: A Sketch*, by Jennifer Elsea, and CRS Report RS22266, *The Use of Federal Troops for Disaster Assistance: Some Legal Issues*, by Jennifer K. Elsea.

²² The response from other states under such agreements has been unprecedented. National Guard personnel from all fifty states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands all joined in the relief effort. Some interstate agreements are negotiated state to state; others occur under the umbrella of the Emergency Management Assistance Compact (EMAC). For more information on EMAC, See CRS Report RS21227 *Emergency Management Assistance Compact*, by Keith Bea. The EMAC website is [<http://www.emacweb.org>].

²³ National Guard Bureau press releases, “Gov. Perry Recalls Texas Forces from Louisiana; Begins Preparations for Rita” and “Texas Guard Begins Return to Home State,” Sept. 19, 2005; Joint Legislative Liaison, National Guard Bureau.

²⁴ Specifically, they are entitled to protection under the Uniformed Services Employment (continued...)

of their governor and are therefore not subject to the restrictions of the Posse Comitatus Act. This is the provision of law which was used to provide federal pay and benefits to the National Guard personnel who provided security at many of the nation's airports in the aftermath of the terrorist attacks of September 11, 2001.

Shortly after Katrina, the Chief of the National Guard Bureau, Lieutenant General Blum, reportedly asked the Secretary of Defense to approve the retroactive transfer of all National Guard personnel participating in Katrina-related disaster relief operations from state active duty to duty under Title 32. The purpose of this request was to equalize pay and benefits for all National Guard personnel rather than having their compensation based on disparate state and territorial laws. On September 7, Acting Deputy Secretary of Defense Gordon England signed a memorandum approving the use of federal funds "for use of the National Guard in Title 32 U.S. Code status to support Hurricane Katrina disaster relief efforts retroactive to August 29, 2005."²⁵ Shortly thereafter, the Army and Air National Guard issued implementing instructions to convert National Guard personnel participating in the Katrina relief operations from state active duty to Title 32 status. However, Iowa and Delaware have reportedly opted not to convert their National Guard personnel to Title 32 status given the more beneficial rate of compensation provided by state law.²⁶ National Guard personnel responding to Hurricane Rita were either already in a Title 32 status, after having served in Louisiana in support of Hurricane Katrina recovery efforts, or were directly ordered to duty in that status.²⁷

²⁴ (...continued)

and Reemployment Rights Act (USERRA), but are not always covered by the Servicemembers' Civil Relief Act (SCRA). SCRA does cover members of the National Guard for "service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under Section 502(f) of Title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds" (P.L. 108-189, Sec. 101(2)(A)(ii), codified at 50 U.S.C. App. 511). Those not covered by the SCRA may, however, receive civil liability protection from state or territorial laws.

²⁵ Gordon England, Acting Deputy Secretary of Defense, "Memorandum for Secretary of the Army, Acting Secretary of the Air Force; Subject: Hurricane Katrina Relief Efforts," Sept. 7, 2005.

²⁶ Joint Legislative Liaison, National Guard Bureau. Compensation under state law may be more beneficial to some National Guard personnel than compensation under federal law. For example, Delaware state law specifies that "while on State duty on account of an emergency" specified in law, members of the Delaware National Guard shall receive "a sum equal to twice the per diem pay and allowances that military personnel of like grade and length of service in the United States Army would be entitled to receive for a similar period of service." (Delaware Code, Title 20, Section 181) Iowa state law specifies that "Officers and enlisted persons while in state active duty shall receive the same pay, per diem, and allowances as are paid for the same rank or grade for federal service. However, a person shall not be paid at a base rate of pay of less than one hundred dollars per calendar day of state active duty." (2005 Iowa Code, 29A.27) This minimum rate effectively guarantees a higher rate of pay to most enlisted personnel and some junior officers.

²⁷ Joint Legislative Liaison, National Guard Bureau.

Federal Status

National Guard personnel can also be activated in a purely federal status. For example, the President can invoke the Insurrection Act (10 U.S.C. §§ 331-335), which allows the President to call the militia (which includes the National Guard)²⁸ into federal service for certain purposes, including the suppression of insurrection against a state government, at the request of that government (10 U.S.C. § 331), the enforcement of federal laws and suppression of rebellion against the authority of the United States (10 U.S.C. §332), and the prevention of interference with state and federal laws, if that interference deprives a class of people of rights, privileges, immunities, or protections named in the Constitution (10 U.S.C. § 333).²⁹ Similar authority is contained in 10 U.S.C. § 12406, which permits the President to call members and units of the National Guard into federal service to repel invasion, suppress rebellion, or execute the laws of the United States; orders for this latter type of call up must be transmitted through the appropriate governor. In this federal status, National Guard personnel operate under the control of the President, receive federal pay and benefits, and can perform law enforcement duties.

The President may also order National Guard personnel to federal active duty under several other provisions of law, including 10 U.S.C. 12301(a), 12301(b), 12301(d), 12302, and 12304. Under these authorities, National Guard personnel operate under the control of the President, receive federal pay and benefits, and are subject to the Posse Comitatus Act. However, it is unclear how useful these authorities would be for responding to a disaster as they have traditionally been used for national security or training purposes and have constraints which limit or prohibit their use for disaster relief operations. For example, 10 U.S.C. 12301(a) can only be used “in time of war or of national emergency declared by Congress or when otherwise authorized by law.” Activations under 10 U.S.C. 12301(b) are limited to 15 days and, for National Guard personnel, require the consent of the affected governor. 10 U.S.C. 12301(d) permits voluntary activation of National Guard personnel, but not involuntary activation, and also requires the consent of the affected governor. National Guard personnel may be involuntarily activated under 10 U.S.C. 12302, but only “in time of national emergency declared by the President...or when

²⁸ 10 U.S.C. § 311 states “(a) the militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become citizens of the United States and of female citizens of the United States who are members of the National Guard. (b) The classes of the militia are - (1) the organized militia, which consists of the National Guard and the Naval Militia; and (2) the unorganized militia, which consists of members of the militia who are not members of the National Guard or the Naval Militia.”

²⁹ President George H. W. Bush invoked the Insurrection Act in 1989 in order to use National Guard personnel to suppress violence in the Virgin Islands in the aftermath of Hurricane Hugo (Executive Order 12690, September 20, 1989) and again in 1992 to suppress rioting in Los Angeles after the Rodney King verdict (Executive Order 12804, May 1, 1992). According to one news account, current Administration officials considered invoking the Insurrection Act and calling National Guard personnel into federal service in response to Hurricane Katrina, but decided against it for several reasons. Eric Lipton, Eric Schmitt and Thom Shanker, “Political Issues Snarled Plans for Troop Aid,” *New York Times*, Sept. 9, 2005, p. 1.

otherwise authorized by law.”³⁰ Finally, the President may call members of the National Guard into federal service under 10 U.S.C. 12304 if he determines it necessary “to augment active forces for any operational mission”; however the statute prohibits the President from calling units or members to active duty to perform duties related to repelling invasion, suppressing insurrection, enforcing laws or “providing assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe.” The statute makes an exception to this latter prohibition for certain emergencies related to terrorist attacks and weapons of mass destruction.

Activation Statuses: Advantages and Disadvantages

Each of these activation authorities have advantages and disadvantages when dealing with disasters. Under state active duty and Title 32 activations, governors retain control over their National Guard personnel, which is consistent with principles of federalism and the traditional role of state governors in responding to disasters. Moreover, duty in these statuses poses no obstacle to the use of National Guard personnel in a law enforcement capacity. However, in the case of catastrophic events involving multiple jurisdictions and levels of government, state control of the National Guard can potentially interfere with the effective coordination and utilization of resources. Federalizing National Guard forces, on the other hand, could increase the efficiency of a major disaster response effort; however, it would do so by stripping state governors of one of their most valuable emergency response assets. Additionally, calling National Guard personnel into federal service requires that the President either invoke statutory exceptions to the Posse Comitatus Act such as the Insurrection Act, which might be inflammatory, or that the National Guard personnel refrain from acting in a law enforcement capacity.

In an effort to eliminate some of these trade-offs, Congress revised the statutes governing National Guard officers called into federal service in the National Defense Authorization Act for FY2004 (P.L. 108-106). Prior to this revision, all National Guard personnel called to full-time duty in the active military service of the United States were automatically relieved from duty in the National Guard of their state. Section 516 provided an exception to this general rule for certain National Guard officers called to active duty. As the conference report explained, the provision would:

...allow officers of the Army or Air National Guard, called to active duty for the purpose of commanding a unit composed of both active duty and reserve component personnel, to retain and exercise their Army or Air National Guard state commissions if authorized by the President and the governor. Such National

³⁰ For the purpose of responding to a catastrophic natural disaster, 10 U.S.C. 12302 would probably be the authority that would be most useful for calling large numbers of National Guard personnel and other reservists to federal active duty for an extended period of time, although 10 U.S.C. 12301(b) and 12301(d) would likely be useful as well. Historically, however, 10 U.S.C. 12302 has only been used for national security purposes and it could be controversial to use this authority for disaster relief purposes. This is the authority currently in use for mobilizing reservists in support of Operation Iraqi Freedom, Enduring Freedom, and Noble Eagle. It was also used during Operation Desert Storm (1990-1991).

Guard officers would have the authority to command subordinate active duty personnel by virtue of their own active duty status and also retain the authority to command National Guard personnel in a nonfederal status.³¹

In testimony before the House Armed Services Subcommittee on Terrorism, Unconventional Threats and Capabilities last March, Assistant Secretary of Defense for Homeland Security Paul McHale described how this authority had been used:

But utilizing a recent statutory provision, beginning at the G-8 summit, but then again at the Democratic convention, the Republican convention, and Operation Winter Freeze along the Canadian border, a single National Guard officer — one man — was given a dual-hatted command. He was placed in Title 32 status to command the Title 32 forces. He was placed simultaneously in Title 10 status under the command and control of the combatant commander so that unity of effort could be achieved, even though we maintained the distinction in terms of unity of command.³²

According to one report, a variation of this model — with an active duty officer being sworn into the Louisiana Guard, rather than a Louisiana National Guard officer being called to active duty — was advanced by the Administration in its discussions with the governor of Louisiana but she rejected it. “In a separate discussion last weekend,” the article stated, “the governor also rejected a more modest proposal for a hybrid command structure in which both the Guard and active-duty troops would be under the command of an active-duty, three-star general — but only after he had been sworn into the Louisiana National Guard.”³³ It is not yet clear whether the lack of a unified command over both National Guard and DOD active duty personnel affected Katrina-related military operations.

³¹ H.Rept. 108-354, *National Defense Authorization Act for Fiscal Year 2004, Conference Report to Accompany HR 1588*, November 7, 2003, p. 688.

³² Paul McHale, Assistant Secretary, Homeland Defense, Department of Defense, *Hearing on Department of Defense Homeland Security Responsibilities before the House Armed Services Subcommittee on Terrorism, Unconventional Threats and Capabilities*, March 15, 2005.

³³ Eric Lipton, Eric Schmitt and Thom Shanker, “Political Issues Snarled Plans for Troop Aid,” *New York Times*, Sept. 9, 2005, p. 1.

Table 1: Activated National Guard Personnel Serving in Louisiana and Mississippi

Date	Number Serving in Louisiana			Number Serving in Mississippi		
	Louisiana National Guard Personnel	National Guard Personnel from Other States	Total	Mississippi National Guard Personnel	National Guard Personnel from Other States	Total
Aug. 30	5,804	178	5,982	3,822	16	3,838
Aug. 31	5,804	663	6,467	3,822	1149	4,971
Sept. 1	5,804	2,555	8,359	3,823	2,861	6,684
Sept. 2	6,779	5,445	12,224	3,823	3,719	7,542
Sept. 3	6,779	10,635	17,432	3,823	6,314	10,137
Sept. 4	6,779	12,404	19,183	4,017	9,399	13,416
Sept. 5	6,779	16,162	22,941	4,017	10,999	15,016
Sept. 6	6,779	20,510	27,289	4,023	11,095	15,118
Sept. 7	6,779	22,589	29,368	4,023	11,388	15,411
Sept. 8	6,779	23,476	30,255	4,023	11,506	15,529

Source: Data extracted from slides to briefing entitled “Hurricane Katrina Update Brief 101000 Sept. 2005,” National Guard Bureau. (Military date-time group cited in briefing title means 10:00 AM, Sept. 10, 2005)

DOD Katrina-Related Appropriations³⁴

Between the two enacted supplementals, DOD has received \$1.9 billion, including \$500 million in P.L. 109-61 and \$1.4 billion in P.L. 109-62, to pay for emergency evacuation of DOD personnel and repair at some 20 affected installations. According to initial estimates, the monies will be used as follows:

- \$960 million to make emergency repairs to DOD facilities;
- \$370 million to evacuate and support 44,000 military personnel, and 32,000 DOD civilians;
- \$570 million to pay to mobilize and support about 44,000 national guard personnel for 45 days.³⁵

³⁴ Prepared by Amy Belasco, Specialist in National Defense; Foreign Affairs, Defense, and Trade Division.

³⁵ DOD fact sheet, Sept. 7, 2005 and *Congress Daily*.

FEMA reimburses DOD separately for its help in rescue and relief operations, estimated at about \$4.6 billion thus far.³⁶

Damage at defense installations ranges from minor problems with roofs and fences to wholesale damage to facilities in New Orleans and Mississippi. Three of the damaged facilities — Naval Supply Activity in New Orleans, the Army ammunition plant in Mississippi, and Naval Station, Pascagoula, Mississippi — are on the base closure list that the President submitted to Congress on September 15, 2005.

The second Katrina supplemental, P.L. 109-62, also permits DOD to transfer up to \$6 million to cover the costs for residents who were evacuated from the U.S. Naval Home in Mississippi, a retirement home for certain retired military personnel, to the U.S. Soldiers' and Airmen's Home in Washington, D.C.

The DOD funds are appropriated to Operation and Maintenance, Defensewide, set up as a transfer account where DOD can move monies to other accounts, depending on the type of expense (e.g., to pay military personnel costs, operating costs, procurement, family housing, and Defense Health). Funds that turn out not to be needed may be returned to the account and then transferred elsewhere.

The appropriators approved the amount requested in both supplementals, but added language that requires that the Armed Services and Appropriations Committees in both the House and Senate be notified in writing within five days of when and where funds are transferred. This requirement is important to clarify which funds in the various accounts are for hurricane-related expenses as opposed to those for military operations and regular peacetime activities.

Issues for Congress³⁷

Timeline of Response

The issue that has attracted the most attention in post-Katrina discussions has been the speed of rescue and relief operations. As noted, NORTHCOM began its alert and coordination procedures significantly before Katrina's landfall and the subsequent levee breaches. It is not yet clear exactly when DHS/FEMA first requested DOD assistance or what was specifically requested. From press releases and reports to date, it appears that DOD made its own assessments of what resources would be useful and began moving towards deployment prior to or shortly after Katrina's landfall. However, it was not until after the presidential declaration of a federal catastrophic emergency and the subsequent declaration of an Incident of National Significance on August 30, that many deployments began. This is in

³⁶ Senate Budget Committee, *Budget Bulletin*, Sept. 12, 2005, [<http://budget.senate.gov/republican/analysis/2005/bblatest.pdf>].

³⁷ Prepared by Steve Bowman, Specialist in National Defense; Foreign Affairs, Defense, and Trade Division

keeping with the National Response Plan and DOD's Homeland Security Doctrine, though it may have slowed arrival of needed DOD assets in the affected region. Another factor that affected deployments is simply that most relief assets must be kept out of the storm's path until it passes to avoid their own destruction. It is possible, however, that an earlier and phased deployment could have brought assets closer to the affected region in a more timely fashion. Relief assets' approach was also slowed to some extent by damage to airports/airbases, highways, and the concern about underwater obstructions in the New Orleans Port area. Even after the activation of JTF-Katrina on August 30, DOD's response appears incremental, responding to an increasingly deteriorating situation. The hospital ship *USS Comfort* was not dispatched from Baltimore until August 31. Additional active duty ground forces (82nd Airborne, 1st Cavalry) did not begin deploying until September 3, arriving on September 5. Again, transportation challenges in the affected area may have played some role in slowing these troops' arrival. Until there is a better understanding of the timing and content of any presidential directives and of the specific requests DHS/FEMA or local authorities made to DOD, it is not possible to make a definitive assessment of DOD's timeliness in responding.

Structural or Administrative Failures?

Congress may wish to examine whether the shortcomings in Katrina relief efforts are the result of structural problems with federal and agency disaster plans/doctrines, the failure of administrative officials to execute effectively, or both. Are the National Response Plan and DOD's Joint Homeland Security Doctrine too "procedure-bound," with too many decision points and approvals required? Or were provisions for expediting responses inadequately utilized? With regard to DOD particularly, the fundamental principle that it is almost always a supporting agency and the resource of last resort may serve to encourage a reactive rather than proactive mode of operation. This principle exists because, for DOD, disaster relief is secondary to its primary mission of national defense, and there has been a traditional concern that any greater emphasis on essentially civilian or non-military operations would detract from its preparedness for its primary mission. Nevertheless, absent the development of greater civilian capabilities in disaster response, the expectation will remain that DOD will provide substantial, if not massive, assistance in instances of catastrophic disasters. Current doctrine requires that state, local, and other federal agencies be "overwhelmed" before DOD resources are requested. The question then arises, whether the agencies and authorities that have been overwhelmed are indeed capable of making the incident assessments and informed resource requests necessary to obtain DOD assistance.

In assessing the response to Katrina, one of the more difficult tasks is determining what are reasonable expectations in the face of a disaster of unprecedented scale. What shortcomings in relief efforts could have been avoided with better planning and execution, and what were simply unavoidable given, for instance, the regional destruction of communication and transportation infrastructure? Another consideration is the question of predictability. Though many sources have predicted the possibility or probability of a hurricane with Katrina's effect on this region (and on New Orleans in particular), repeated warnings followed by "near misses" over the years may have contributed to a less proactive response to warnings about Katrina's predicted effect on this occasion.

Federalization of the Evacuation/Command of the National Guard

There has been considerable discussion of Louisiana Governor Blanco's refusal to permit DOD's JTF-Katrina to assume control of the evacuation efforts and to assume command of the National Guard personnel in Louisiana. This controversy has highlighted the possible political element in the conduct of relief operations. If state authorities wish to retain control of the National Guard, which may be the largest resource at their command, at what point can or should presidential authority be invoked to override state authority?

Both President Bush and Senate Armed Services Committee Chairman Warner have indicated a desire to explore expanding the authority of the Department of Defense in disaster response. A part of this may be a review of the so-called *posse comitatus* statute and subsequent DOD directives which limit the situations in which federal military personnel may conduct law enforcement activities (e.g., search and seizures, arrests). It is not clear if the use of active duty federal troops would or could have mitigated the incidence of violence in Katrina's aftermath, given the earlier availability of National Guard troops in the region with law enforcement authority. It also appears that early estimates of violent crime in the region may have been overstated.

What is not clear to date is exactly what effect retention of state control of National Guard personnel had upon the conduct of relief operations. What operations could have been executed more expeditiously with a unified command structure? Were the command and control breakdowns between the military components of the relief effort or between civilian and military components? The answers to these questions may provide guidance for future operations; however, it is noteworthy that command coordination is often highly dependent upon the personalities and relationship of the relevant commanders.

Impact of Overseas Deployments on DOD's Response

It has been suggested that the substantial overseas deployments in Iraq and Afghanistan affected the ability of both the National Guard and active duty forces to carry out relief operations. This contention has been repeatedly denied by both the DOD and National Guard leadership.³⁸ Though DOD has sought to focus this question on the number of personnel that remained available for relief operations, there is anecdotal evidence that, particularly for the National Guard, the issue centered more upon the availability of equipment rather than personnel. It has been DOD's practice to have many units that deploy to Iraq leave their equipment in Iraq when they return so that it can be used by subsequent units. As a result, for example, it has been reported that National Guard units responding to Katrina did not have adequate numbers of tactical radios or High Mobility Multipurpose Wheeled Vehicles (HMMWVs) adapted for high water operations because this equipment was in Iraq. Another example noted is that of the 101st Air Assault Division, based in Ft.

³⁸ Department of Defense Press Briefings, August 31, Sept. 6, 2005, [<http://www.defenselink.mil/transcripts/archive.html>]

Campbell, KY. This division, which has the largest number of transport helicopters of any Army unit, was not deployed to Katrina operations because it is in the process of deploying to Iraq.³⁹

Impact of Katrina on the Quadrennial Defense Review

The Department of Defense is in the midst of the Quadrennial Defense Review (QDR), a congressionally-mandated examination of the Department's roles, missions, and capabilities. The controversies surrounding the adequacy of the federal response to Katrina are expected to have an effect on DOD's consideration of its responsibilities and capabilities with regard to catastrophic incidents. Though Katrina was a natural disaster, many of its effects could be encountered as a result of an intentional attack (e.g., destruction of communication, transportation, and flood control infrastructures; mass casualties; or civil unrest). With the QDR not due to Congress until February, there will be ample time to apply at least initial "lessons learned" from Katrina. With the likelihood that DOD leadership will continue to maintain its emphasis on overseas operations as the primary mission for active duty forces, it is the future role, structure, force-level and equipping of the National Guard that may receive the most attention as a result of Katrina's demand upon DOD resources.

It has been suggested before that the National Guard be reorganized to focus on domestic missions. In preparation of the 1997 QDR, Army leadership suggested reducing the combat role of National Guard units and stressing support functions (e.g., logistics, communications, military police, and engineers). This was strongly opposed by the National Guard Bureau, and the recommendation was not included in the final QDR. In 2000, one of the recommendations of the United States Commission on National Security/21st Century (Hart-Rudman Commission) was to reduce the National Guard's emphasis upon potential overseas combat deployments and increase its attention to domestic incident capabilities. This was again opposed by the National Guard leadership, which continued to defend the importance of maintaining its combat capabilities.⁴⁰ This argument by the Guard has received substantial support from DOD's evidenced need to use substantial numbers of National Guard troops in Iraq.

Regardless of whether civil support remains a responsibility divided between active duty and National Guard forces, it is likely that questions of personnel levels and equipping for both elements of the armed services will be addressed. It will then be necessary to determine what level of investment will be required to meet civil support expectations. Though the study of Katrina relief operations may have an effect on QDR recommendations, it will be necessary to examine to what extent the demands of such an extraordinary catastrophic event should be used as baseline guidance.

³⁹ "Military Lacked Critical Gear In responding to Katrina," *Newhouse.Com*, Sept. 13, 2005; "Behind Poor Katrina Response, A Long Chain of Weak Links," *Wall Street Journal*, Sept. 6, 2005, p. 1.

⁴⁰ "Katrina Likely to Fuel Debate Over Guard's Combat, Homeland Defense Roles," *Inside Defense*, Sept. 9, 2005.

The extent of the resources needed to deal with the consequences of Hurricane Katrina, on top of the requirements for combat operations in Iraq and Afghanistan, raises the question of what resources would be available in the event of another almost simultaneous catastrophic event. Though some have suggested that a disaster like Katrina increases potential vulnerability to opportunistic terrorist attack, the approach of Hurricane Ophelia along the eastern seaboard shortly after Katrina's strike demonstrates the potential for sequential natural disasters. It could be useful to examine what resources were marshalled in response to the threat of Hurricane Ophelia, and how these efforts were affected by on-going operations on the Gulf Coast.

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