

# **Defense Support to Civil Authorities Surveying Institutional Challenges**

**A Monograph  
by  
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## **Abstract**

Defense Support to Civil Authorities: Surveying Institutional Challenges by MAJ Anthony T. Murtha, U.S. Army. 49 pages.

Since the attacks on 9/11 and the subsequent establishment of the Department of Homeland Security, the Department of Defense (DoD) has struggled with its role in Defense Support to Civil Authorities. Although most disasters can be handled by first responders and mobilized state National Guard units, catastrophic regional disasters or terror attacks could quickly overwhelm those resources triggering a large-scale total force response from the DoD. The current framework, while adequate for the majority of the disasters that affect the nation, may prove itself insufficient for the day given the modern threat to the homeland.

Institutional challenges prevent the rapid designation, preparation, and employment of military forces to support civil authorities when a national disaster occurs. These challenges are the consequence of both statutory provisions that restrict the development of an adequate command structure and operating requirements that prevent preparation for incident response from receiving adequate attention. Effective disaster response requires a collaborative effort across the interagency and between the Federal and State governments to anticipate and overcome challenges prior to an event.

Though the Secretary of Defense recently reiterated the DoD's commitment to homeland security by allocating active duty forces to the mission, DoD assists civil authorities as a provider of last resort following exhaustion of local, state, and other federal resources. The responsibility of the DoD to support civil authorities under the National Response Framework requires forces dedicated and available for rapid deployment in order save lives, protect property, and mitigate the suffering of our citizens. However, the significance lies in the readiness and training of the total force to respond to future catastrophic events.

This monograph assesses the relevance of the statutes that define DoD's constraints for conducting operations in the homeland and the adequacy of the current framework to determine if the structure is sufficient for a rapid response to unexpected catastrophic disaster. Furthermore, the research examined the protocols that govern disaster response across the whole of government to determine exactly how the DoD in a supporting role, integrates itself within National Incident Management System. Finally, the research yields some recommendations for leveraging DoD capabilities within the current framework.

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## INTRODUCTION

*The president's very right about one thing: When you have a disaster of that scale, whether it be natural or a terrorist attack, there's only one part of our entire government, state or local, that is equipped to handle it, and that's the U.S. military. They have the command; they have the people; they have the discipline; they have the equipment; they have the transport; they have the communications. They have what it takes.<sup>1</sup>*

Warren Rudman

Disasters occur daily in the United States. However, most local and state response organizations are capable of meeting the requirements. Incidents of national significance<sup>2</sup> occur infrequently, such as a major earthquake in San Francisco or a terrorist attack in New York City. The probability exists that they will happen again, perhaps even in the same location with the greater scope and scale. History provides a guide to the resiliency of the American people to overcome challenges in desperate circumstances. It is a narrative woven into the cultural fabric and character of the nation. The Army has a long history of providing support to American citizens in time of need, even when there existed at the time no precedent or doctrine for providing civil support.<sup>3</sup> The second order effects of the levees breaking in Katrina produced an unanticipated national disaster that demonstrated the weakness of the U.S. emergency management. Though the DoD was not designated the lead federal Agency<sup>4</sup> during Hurricane

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<sup>1</sup> Quote by former U.S. Senator Warren Rudman. PBS Interview October 5, 2005. <http://www.pbs.org/wgbh/pages/frontline/storm/interviews/rudman.html> (accessed April 26, 2009).

<sup>2</sup> The National Response Framework eliminated the term 'Incident of National Significance' with regard to declaration. No such declaration is required by the Framework and none will be made. The authorities of the Secretary of Homeland Security to coordinate large-scale national responses are unaltered by this change. Elimination of this declaration will, however, support a more nimble, scalable, and coordinated response by the entire national emergency management community. This term is found in previously dated Joint Publications.

<sup>3</sup> James A. Wombwell. Occasional Paper #29 Army Support During the Hurricane Katrina Disaster (Fort Leavenworth, Kansas: US Army Combined Arms Center Combat Studies Institute Press, 2009), 16.

<sup>4</sup> Lead Federal Agency. According to the CALL Handbook for disaster, LFA is a term used by DOD, not DHS. The LFA is the federal agency that leads and coordinates the overall federal response to an emergency. Designation and responsibilities of an LFA vary according to the type of emergency and the agency's statutory authority.

Katrina, the disaster highlighted the failures in the local, state, and federal government response to the crisis. Additionally, the disaster identified command authority issues that hindered achieving unity of command and effort between active duty military responders and the State National Guard.<sup>5</sup> If the past is prologue, these historical events and the lessons learned from disasters should shape DoD preparedness and doctrine for the future.

Since the attacks on 9/11 and the subsequent establishment of the Department of Homeland Security, the Department of Defense (DoD) has struggled with its roles and responsibilities within the National Response Framework. Natural disasters are today only part of the challenge for Defense Support of Civil Authorities (DSCA)<sup>6</sup> planning. “At the high end of the threat spectrum, however, the 21st century environment has fundamentally altered the terms under which Department of Defense assets and capabilities might be called upon for support. The potential for multiple, simultaneous, CBRNE attacks on US territory is real.”<sup>7</sup> Although most disasters can be handled by first responders<sup>8</sup> and mobilized state National Guard units, catastrophic regional disasters or terror attacks could quickly overwhelm those resources triggering a large-scale total force response from the DoD.<sup>9</sup>

The Strategy for Homeland Defense and Civil Support states that “in the event of major catastrophes, the President will direct DoD to provide substantial support to civil authorities. DoD’s responses will be planned, practiced, and carefully integrated into the national

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<sup>5</sup> GAO. *Hurricane Katrina, Better Plans and Exercises Need to Guide the Military’s Response to Catastrophic Natural Disasters*, GAO-06-808T (Washington, D.C.: GAO, May 25, 2006), 10.

<sup>6</sup> JP 1-02, Defense Support of Civil Authorities (DSCA). Civil support provided by DoD under the auspices of the National Response Plan (NRP is now called the National Response Framework).

<sup>7</sup> Department of Defense. *Strategy for Homeland Defense and Civil Support*. June 2005, 19.

<sup>8</sup> Defined by HSPD-8: the term 'first responder' refers to those individuals who in the early stages of an incident are responsible for the protection and preservation of life, property, evidence, and the environment, including emergency response providers as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101), as well as emergency management, public health, clinical care, public works, and other skilled support personnel (such as equipment operators) that provide immediate support services during prevention, response, and recovery operations

<sup>9</sup> U.S. Department of Homeland Security, *National Response Plan*, December 2004, [http://www.dhs.gov/xlibrary/assets/NRP\\_FullText.pdf](http://www.dhs.gov/xlibrary/assets/NRP_FullText.pdf) (accessed March 10, 2009), 42.

Response.”<sup>10</sup> Although U.S. Northern Command (NORTHCOM)<sup>11</sup> has few resources of its own with which to accomplish its assigned civil support mission, NORTHCOM is, nevertheless, the DoD agency tasked to anticipate and conduct Homeland Defense and Civil Support operations within the United States. In its stated mission NORTHCOM “generally operates through established Joint Task Forces subordinate to the command. An emergency must exceed the capabilities of local, state and federal agencies before USNORTHCOM becomes involved. In most cases, support will be limited, localized and specific.”<sup>12</sup> The underlying premise is that DOD and NORTHCOM provide the trained and rapidly deployable expertise to support the Lead Federal Agency until the disaster consequences are reduced to a manageable level enabling DoD forces to redeploy.

## **RESEARCH QUESTION AND CLAIM**

The Department of Defense views Defense Support of Civil Authorities as one of its core missions.<sup>13</sup> But what are the statutory and self imposed institutional impediments to providing the military forces to meet the requirements for civil support established in the National Response Framework in the event of a catastrophic disaster? Institutional challenges prevent the rapid designation, preparation, and employment of military forces to support civil authorities when a national disaster occurs. These challenges are the consequence of both statutory provisions that restrict the development of an adequate command structure and operating requirements that

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<sup>10</sup> Department of Defense. *Strategy for Homeland Defense and Civil Support*. June 2005. 9.

<sup>11</sup> NORTHCOM was created in April 2002 as part of a revised Unified Command Plan. It became officially operational on October 1, 2002.

<sup>12</sup> NORTHCOM Official Website. <http://www.northcom.mil/About/index.html>. Accessed 10 October 2008.

<sup>13</sup> In compliance with section 941 of the 2008 National Defense Authorization Act, DoD defines DSCA as one of the six Core Mission Areas. Drawn from the 2008 National Defense Strategy, the ‘core missions’ “constitute a broad military activity; they describe a unique Department of Defense capability and capacity; or they identify a mission for which the Defense Department is the U.S. Government lead and/or provides the preponderance of U.S. Government capabilities.” DoD Quadrennial Roles and Missions Review Report (January 2009). [http://www.defenselink.mil/news/Jan2009/QRMFinalReport\\_v26Jan.pdf](http://www.defenselink.mil/news/Jan2009/QRMFinalReport_v26Jan.pdf). (accessed April 20, 2009), 5.

prevent preparation for incident response from receiving adequate attention. The legal and statutory framework authorizing DSCA defines responsibility and limitations for the DoD operating within the homeland. The current framework challenges the roles and responsibilities of the total force creating potential points of friction for effective unity of command. Understanding of the nuances of the statutory framework and processes enable commanders and planners to forge effective disaster response. Required is an assessment of how DoD plans, trains, equips, and sources the total force for response in support of the Emergency Support Functions. The military's role in support of DSCA is evolving at a rapid pace. Effective disaster response requires a collaborative effort across the interagency and between the Federal and State governments to anticipate and overcome challenges prior to an event. The current framework, while adequate for the majority of the disasters that affect the nation, may prove itself insufficient for the day given the modern threat to the homeland.

Force generation requirements for the ongoing wars in Iraq and Afghanistan limit the forces available for a domestic response.<sup>14</sup> This requires an increased reliance on the National Guard to manage these emergencies.<sup>15</sup> The Secretary of Defense recently re-iterated the DoD's commitment to Homeland Security by allocating active duty forces to the mission.<sup>16</sup> DoD's Joint Publication 3-26 issued in 2005 states "MSCA<sup>17</sup> is the most widely recognized form of DoD Civil Support because it usually consists of support for high-profile emergencies that often invoke Presidential or state emergency/disaster declarations."<sup>18</sup> DoD assists civil authorities as a provider

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<sup>14</sup> GAO. Homeland Defense: *U.S. Northern Command Has Made Progress but Needs to Address Force Allocation, Readiness Tracking Gaps, and Other Issues*, GAO-08-251(Washington, D.C.: GAO, April 2008).

<sup>15</sup> William Perry, *The U.S. Military: Under Strain and at Risk The National Security Advisory Group*, January 2006 [http://democrats.senate.gov/pdfs/NationalSecurityReport\\_01252006.pdf](http://democrats.senate.gov/pdfs/NationalSecurityReport_01252006.pdf) (accessed April 19, 2009). 3

<sup>16</sup> Hsu, Spencer S., and Tyson, Ann. "Pentagon to Detail Troops to Bolster Domestic Security." *Washington Post* (December 1, 2008): A01.

<sup>17</sup> MSCA. Military support to civil authorities.

<sup>18</sup> U.S. Joint Chiefs of Staff, *Homeland Security*, Joint Publication 3-26, August 2, 2005, IV-4

of last resort following exhaustion of local, state, and other federal resources. The responsibility of the DoD to support Civil Authorities under the National Response Framework requires forces dedicated and available for rapid deployment in order save lives, protect property, and mitigate the suffering of our citizens. However, the significance lies in the readiness and training of the total force to respond to future catastrophic events.

To determine whether NORTHCOM can effectively fulfill its responsibilities for civil support during a major national incident, it was necessary first to identify the statutory framework that authorizes the response. Of particular interest are the lists of known skills or capabilities that are required on short notice by the civil authorities and the substantial capability that DoD can leverage for response to catastrophic incidents. Equally important are the provisions for establishing task forces and for designating command and coordinating authorities. It is not possible to determine the adequacy of current arrangements because there has not been an incident of sufficient scope and scale since Hurricane Katrina to test the post-Katrina reforms.

Despite the struggle to define roles and responsibilities within the National Response Framework, DSCA must be a core mission entitled and adequately funded by Congress. This monograph assesses the relevance of the statutes that define DoD's constraints for conducting operations in the homeland and the adequacy of the current framework to determine if the structure is sufficient for an rapid response to unexpected catastrophic disaster. Furthermore, the research examined the protocols that govern disaster response across the whole of government to determine exactly how the DoD in a supporting role, integrates itself within National Incident Management System. Finally, the research yields some recommendations for leveraging DoD capabilities within the current framework.

The research was not a post mortem of Hurricane Katrina. However, the examples provided by that event provide insight into the challenges of a regional disaster and the changes enacted to improve federal disaster response. Additionally, the monograph does not argue for DoD to assume lead agency responsibility for a disaster response. DoD lacks the experience and

structure to assume that responsibility from FEMA and the DHS. Lastly, this monograph does not identify statutory changes to eliminate DoDs legal constraints. Amending the current statutory structure lies in the purview of elected officials to determine the DoD's roles and authorities related to DSCA. Regardless of which Federal agency is the lead for a disaster, DoD will likely possess the most resources. It is incumbent upon DoD to set the conditions before the next disaster to ensure the easy integration of active duty forces into the response framework.

## AUTHORITY FOR RESPONSE

The authority for the DoD's response in support of DSCA is codified in several laws that provide the legal basis for response and govern military actions. The Constitution shapes the basic principles established by the framers to separate the role of the federal government and states. However, the threats faced by the Nation long since Shay's Rebellion today present challenges unanticipated by the founding fathers who sought a "counterbalance to the fears of the use of federal military force in domestic emergencies."<sup>19</sup> The Posse Comitatus Act (PCA) and Insurrection Act establish the legal authority shaping the basic limits for military action. Additionally, the Stafford Act, Homeland Security Act, Presidential Directives, and several DoD Directives specify the DCSA responsibilities of the DoD. In 2000 the National Commission on Terrorism issued a stern warning that "in preventing or responding to a catastrophic terrorist attack, officials may hesitate or act improperly because they do not fully understand their legal authority or because there are gaps in that authority."<sup>20</sup> Nothing has changed in DoD's legal authority in the years since that report. Furthermore, the Stafford Act, written prior to 9/11 and Katrina, provides a framework that is neither timely nor sufficient for DSCA given the current threat.<sup>21</sup> The hodgepodge of statutory guidance creates a complicated framework for command and control (C2) and responsibility. The Posse Comitatus Act is foremost among the statutes governing response and inspiring debate over the use of the military in domestic law enforcement.

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<sup>19</sup> Robert, W Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789-1878*. 1996, 7.

<sup>20</sup> National Commission on Terrorism, *Countering the Changing Threat of Terrorism*. 7 June 2000. <http://www.fas.org/irp/threat/commission.html>. (accessed April 20, 2009).

<sup>21</sup> Alice Buchalter, *Military Support to Civil Authorities: The Role of the Department of Defense in Support of Homeland Defense*. (Washington, D.C.: Federal Research Division, Library of Congress February 2007), 2.

## Posse Comitatus Act

An artifact of enduring controversy and confusion from the Reconstruction period, the Posse Comitatus Act remains today a constraint on the use of federal troops for domestic law enforcement. The American public has long distrusted military forces serving in a police role. To understand Posse Comitatus requires an examination of the law's historical origins, its original intent, and its interpretation during periods of unrest. The Klu Klux Klan Act enacted in May of 1871 gave President Grant the authority to use the Army to break up the terror cells in the South. Later in October 1871, Grant issued two additional proclamations that ordered the Klan to cease and desist their activities. As arrests mounted Grant went so far as to suspend the writ of habeas corpus in several South Carolina counties. Though the disruption of operations and the arrest of Klan members reduced violence, the actions by the government and the military left a burning hatred among Southern loyalists who were excluded from the political process until the Amnesty Act of 1872.<sup>22</sup> Reconciliation of former combatants enabled the election of Southern Democrats with a mandate from their constituents to seek a political solution to federal meddling into local affairs. The Knott Amendment drafted by Southern Democrats evolved into the Posse Comitatus Act. The Act was passed by the House and the Senate as part of the Army appropriations bill and signed into law by President Hayes on 18 June 1878. In the process the Act discounted 100 years of precedent, leaving African American citizens in the south with no protection from the Army, the only force that had mitigated a domestic threat to their liberty and rights.<sup>23</sup>

Congressional changes to PCA since 1878 have expanded the restrictions to all active duty military services, while leaving interpretation of the act largely unchanged. The turn of the century marked a period of social unrest that stirred a debate over PCA interpretation when the

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<sup>22</sup> Matt Mathews, *The Posse Comitatus Act and the United States Army: A Historical Perspective. Global War On Terrorism Occasional Paper, 14.* (Fort Leavenworth, Kan: Combat Studies Institute Press, 2006), 31.

<sup>23</sup> *Ibid*, 33.

military restored public order by suppressing striking labor organizations. During the First World War, Newton D. Baker, the Secretary of War, suspended the Act leaving its relevance in question. It remained suspended until 1956 when Congress enacted legislation to move the Posse Comitatus Act (PCA) to Title 18, Section 1385 of the US Code. The 1956 legislation recognized the U.S. Air Force as a separate branch of service and set penalties for violation of Posse Comitatus to “fines of more than \$10,000 or imprisonment not more than two years, or both.”<sup>24</sup> Though the Navy and Marine Corps were not included in either the original Act or the 1956 revision, they were brought under the rules of PCA by DoD regulation in 1992.<sup>25</sup>

Title 10 also limits conditions under which the active duty military may be used in a law enforcement capacity in support of civil authorities. The use of Posse Comitatus does not limit the ability of a governor to use his State National Guard to enforce state law in a Title 32 role in response to emergencies. However if the National Guard is called up to Federal Service under Title 10, then the constraints of Posse Comitatus apply to National Guard forces even if they are still performing service within their state. Some lawyers argue “the erosion of the Posse Comitatus Act through congressional legislation and executive policy has left a hollow shell in place of a law that formerly was a real limitation on the military’s role in civilian law enforcement and security issues.”<sup>26</sup> Judge Advocates for Joint Task Force Civil Support explored the impact of PCA constraints on consequence management operations. The lawyers argued that it did not interfere with the mission. Provided the mission “is to provide support to civil authorities, not to engage in law enforcement” there is no conflict with utilizing active duty forces

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<sup>24</sup> Ibid, 41.

<sup>25</sup> 32 C.F.R. Sec 213.2, 1992.

<sup>26</sup>Trebilcock, Craig T. MAJ. “The Myth of Posse Comitatus,” *Homeland Security.Org* (October 2000) <http://www.homelandsecurity.org/journal/articles/Trebilcock.htm>. (accessed 24 April 2009), 4.

for DSCA.<sup>27</sup> Law enforcement activities during the disaster are the responsibility of civilian agencies or activated National Guard forces operating under the control of a state governor. Posse Comitatus while limiting the use of military forces for domestic law enforcement does not limit Presidential power to restore order as specified by the provisions of the Insurrection Act

## **Insurrection Act**

The Insurrection Act of 1807 (10 U.S.C. §§ 331-335) authorizes the President to restore public order and enforce the laws of the United States. The Insurrection Act conditions the use of military forces on a determination that events amount to insurrection, domestic violence, unlawful combination, or conspiracy. The Insurrection Act does allow the military to enforce law as an exception to Posse Comitatus.<sup>28</sup> The Insurrection Act was last invoked for use during the Los Angeles riots in 1992 when federal forces responded to the request of then California Governor Pete Wilson. The Act has not been invoked without a state request since the civil rights era.<sup>29</sup> The lawlessness that followed Hurricane Katrina again inspired debate over the wisdom of invoking the Insurrection Act. The difficult decision of using military to restore order weighed against the political implications of imposing Presidential authority over a governor. Ultimately, the Bush Administration chose not to invoke the Insurrection Act. Thus, Governor Blanco retained control over the Guard in a Title 32 law enforcement capacity.<sup>30</sup> Title 10 U.S. Code § 12406 also allows the President to use the National Guard in activated federal Title 10 status to suppress rebellion and execute U.S. laws. However, even during the lawlessness that followed

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<sup>27</sup> Mary Bradley, Stephanie Stephens, and Michael Shaw, The Posse Comitatus Act: Does It Impact the Department of Defense during Consequence Management Operations? *The Army Lawyer* October 2007, 74.

<sup>28</sup> American Bar Association, *Hurricane Katrina Task Force Subcommittee Report* (ABA Standing Committee on Law and National Security, February 2006),24.

<sup>29</sup> Lipton, Eric, Schmitt, Eric, and Thom Shanker, “Political Issues Snarled Plans for Troop Aid,” *New York Times*, (September 9, 2005): 1.

<sup>30</sup> American Bar Association, *Hurricane Katrina Task Force Subcommittee Report* (ABA Standing Committee on Law and National Security, February 2006), 27

Katrina troops were not utilized in this role.<sup>31</sup> As part of the 2007 Defense Authorization Bill Congress amended the original 1807 Act. The amendment gave the President increased powers to deploy troops within the United States if the disorder is created by a natural disaster, epidemic, serious public health emergency, or terrorist attack. However, the President must first determine that the state is incapable of maintaining public order.<sup>32</sup> The change to the language of the Insurrection Act met stiff opposition from state governors and within a year the revision was repealed as part of the 2008 Defense Authorization Bill. Presidential powers reverted to the terms in the original 1807 Act.<sup>33</sup> While Posse Comitatus and the Insurrection Act establish the legal framework for the employment of the military within the homeland in a law enforcement capacity, the Stafford Act truly provides the bedrock of authorization and defines process for a disaster response.

### **The Robert T. Stafford Disaster Relief and Emergency Assistance Act**

The Robert T. Stafford Disaster Relief and Emergency Assistance Act enacted in 1988 defines the process by which states request assistance from the Federal government in the event of a declaration of an emergency or disaster.<sup>34</sup> The Stafford Act establishes the responsibilities and guidelines for DoD's response domestically in support of civil authorities to alleviate

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<sup>31</sup> Alane Kochems. Heritage Foundation: *Military Support to Civilian Authorities: An Assessment of the Response to Hurricane Katrina* <http://www.heritage.org/research/homelandsecurity/bg1899.cfm>. November 28, 2005 (accessed March 2009).

<sup>32</sup> Jennifer Elsea, *The Use of Federal Troops for Disaster Assistance: Legal Issues*, CRS report for Congress 6 June 2005, 3.

<sup>33</sup> <http://www.fema-law.com/newsletter/Issue9FraudEnhancementDefenseAuth2008.pdf> (accessed April 18, 2009)

<sup>34</sup> The Stafford Act defines an emergency as “any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.” A major disaster is defined as “any natural catastrophe...in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.”

suffering and damage. The provisions of the Stafford Act are met when the governor acknowledges that the disaster exceeds the capability of his respective state's emergency plan and requests that the President formally declare a major disaster or emergency. Army and Air National Guard forces, acting under State orders (i.e., not in federal service), have primary responsibility for providing military assistance to State and local government agencies in civil emergencies. Commitment of federal resources under Sec. 403 Essential Assistance (42 U.S.C. § 5170b) specifies that DoD on approval by the President is authorized to perform "emergency work" in order to save lives and property for up to 10 days. This article provokes a Title 10 versus 32 debate only if the President federalizes the National Guard of that state. If the Guard is federalized the state governor loses the ability to use the Guard to enforce state law during a disaster.

The language contained in the Stafford Act provides no clear distinction for Federal response to specific types of disasters. Incidents such as 9/11 and Hurricane Katrina present challenges not identified at the time the act was written, leaving some to argue for a revision. In her testimony the Legal Counsel for the National Emergency Management Association (NEMA), Tamara S. Little stated "major revisions are not necessary since the law provides flexibility for emergency management in this country." However, she did note that Congress should consider revising the language of the law to reflect CBRNE incidents, terrorism, and even pandemic influenza.<sup>35</sup> Moss and Shelhamer further argue that language in the Stafford Act requires a change to meet the current environment. "For example, the definition of a major disaster does not cover chemical, biological, radiological, or nuclear attacks or accidents. The act should further be amended to encompass 21st century threats."<sup>36</sup> The Stafford Act to date remains unchanged

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<sup>35</sup> Little, Tamara S., Chair, Legal Counsel Committee National Emergency Management Association. Statement before the Senate Committee on Environment & Public Works Hearing Statements. June 27, 2006 [http://epw.senate.gov/hearing\\_statements](http://epw.senate.gov/hearing_statements) (accessed May 4, 2009)

<sup>36</sup> Mitchell L. Moss & Charles Shelhamer, Robert F. Wagner Graduate School of Public Service, New York University (NYU), The Center for Catastrophe Preparedness & Response, *The Stafford Act:*

despite the persistent threat. While the Stafford Act provides the authority for federal response to disasters, it would take 9/11 for the U.S. government to attempt unity of command and effort across the multiple federal agencies that support disaster response through the creation of the Homeland Security Act.

## **Homeland Security Act**

The attacks on 9/11 set the conditions for changing the structure of the US government through the largest reorganization of the Federal government since the National Security Act of 1947. The Homeland Security Act of 2002 established the Department of Homeland Security (DHS), organizing 22 separate agencies and offices under the umbrella of one Federal agency.<sup>37</sup> The Homeland Security Act assigned DHS overall responsibility for disaster response. However, under the provisions of the Stafford Act FEMA retained statutory authority for most federal disaster activities as a subordinate component of DHS.<sup>38</sup> The Homeland Security Act also provided the Secretary of Homeland Security flexibility to establish, consolidate, alter or discontinue organizational units with the consent of Congress. Armed with this authority Secretary Chertoff attempted in 2005 to streamline DHS's structure reaffirming the primary mission of FEMA.<sup>39</sup> With the Stafford Act and the Homeland Security Act providing the authority for response and the government framework to direct the response, the Homeland

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*Priorities for Reform (Cities, Communications and Catastrophe: Improving Robustness and Resiliency)* (2007), [http://www.nyu.edu/ccpr/pubs/Report\\_StaffordActReform\\_MitchellMoss\\_10.03.07.pdf](http://www.nyu.edu/ccpr/pubs/Report_StaffordActReform_MitchellMoss_10.03.07.pdf). (accessed 2 March 2009). 3

<sup>37</sup> Homeland Security Act. Public Law 107–296, NOV. 25, 2002.

<sup>38</sup> The primary mission of the Federal Emergency Management Agency is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation. FEMA Official website. Accessed from <http://www.fema.gov/about/index.shtm> April 20, 2009

<sup>39</sup> Harold Relyea and Henry B. Hogue. *CRS Report for Congress. Department of Homeland Security Reorganization: The 2SR Initiative*, August 19, 2005.

Security Presidential Directives (HSPD) and specifically HSPD-5 provide the commander-in-chief's guidance and intent.

## **Homeland Security Presidential Directives**

Enacted following the Homeland Security Act, President Bush published Homeland Security Presidential Directive #5 to provide detailed policy and to identify tasks for the federal government in disaster response. The directives stated purpose was "To enhance the ability of the United States to manage domestic incidents by establishing a single, comprehensive national incident management system." The intended effect of the directive was the efficient and effective working of all levels of government in the response and management of a crisis.<sup>40</sup> HSPD 5 established crisis management and consequence management as a single and integrated function, rather than as two separate functions. The directive specifically designates the Secretary of Homeland Security as the principal federal official for domestic incidents. Pursuant to the HSA, the Secretary is responsible for coordinating federal operations within the United States to: "prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies. The Secretary of Homeland Security coordinates the federal government's resources in response to terrorist attacks, major disasters, or other emergencies following request from a state, other federal agency, or as directed by the President to assume responsibility."<sup>41</sup> HSPD-5 reinforces the concept that local and state authorities are the first responders with federal involvement the exception. Ultimately HSPD-5 identifies the DHS, and specifically the Secretary of Homeland Security as the single point of unity for the Federal Response across all agencies of the Federal Government as well as state and local authorities.

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<sup>40</sup> HSPD-5, [http://www.nimsonline.com/presidential\\_directives/hspd\\_5.htm](http://www.nimsonline.com/presidential_directives/hspd_5.htm) (accessed January 10, 2009).

<sup>41</sup> Ibid.

The Secretary of Homeland Security, though not assigned with statutory oversight, is required to help state and local entities “to ensure adequate planning, equipment, training, and exercise activities”<sup>42</sup> are in place, and that those plans are nested and compatible among local, state, and federal levels. The issue is that there is nothing to direct that the plans are nested, validated, or sourced across the whole of government and emergency support functions. HSPD-5 leaves NORTHCOM out of the planning process to assist in synchronizing disaster plans between the states and federal level missing an opportunity to establish a statutory forcing function to better integrate DoD in their supporting role.

Nothing in HSPD5 alters the authority of the Secretary of Defense over Department of Defense forces. It does create a potential point of friction between DOD and DHS. The Secretary of Defense shall retain command of military forces providing civil support even if not the Lead Federal Agency. During a disaster response, tasking authority and mission success hinges on not statutory guidance but agreement between the Secretary of Defense and the Secretary of Homeland Security to establish “appropriate relationships and mechanisms” for cooperation and coordination between their two departments. Aside from Statutory Responsibility, three key DoD policy Directives establish standing guidance for DSCA response.

### **DoD Policy Directive 3025.1 and Immediate Response**

Immediate Response is the authority established by DoD Policy directive 3025.1 that allows commanders to respond outside of their posts when conditions do not allow time to gain approval from a higher headquarters in order to save lives, prevent human suffering, or mitigate great property damage. The authority provided by Directive 3025.1 is entrusted solely to commanders enabling them to respond in support of civil authorities during local emergencies. The extensive scope of tasks that a commander is authorized to conduct is specified in section

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<sup>42</sup> HSPD-5, [http://www.nimsonline.com/presidential\\_directives/hspd\\_5.htm](http://www.nimsonline.com/presidential_directives/hspd_5.htm) (accessed January 10, 2009).

4.5.4. Immediate Response may include DoD assistance to civil agencies in meeting the following types of need:

- Rescue, evacuation, and emergency medical treatment of casualties, maintenance or restoration of emergency medical capabilities, and safeguarding the public health.
- Emergency restoration of essential public services (including firefighting, water, communications, transportation, power, and fuel).
- Emergency clearance of debris, rubble, and explosive ordnance from public facilities and other areas to permit rescue or movement of people and restoration of essential services.
- Recovery, identification, registration, and disposal of the dead.
- Monitoring and decontaminating radiological, chemical, and biological effects; controlling contaminated areas; and reporting through national warning and hazard control systems.
- Roadway movement control and planning.
- Safeguarding, collecting, and distributing food, essential supplies, and materiel on the basis of critical priorities.
- Damage assessment.
- Interim emergency communications.
- Facilitating the reestablishment of civil government functions.<sup>43</sup>

This authority granted by DoD Policy is not specified in provisions of the Stafford Act.<sup>44</sup>

Formal requests for assistance from civil authorities in accordance with the Stafford Act may follow but Immediate Response provides an administrative short cut. Immediate Response does not conflict with Posse Comitatus provisions or the Insurrection Act as the tasks are limited to disaster mitigation and not domestic law enforcement. The wide range of tasks authorized gives commanders the latitude required to save lives and property in the early stages of an emergency.

### **DoD Policy Directive 3025.12, Military Assistance for Civil Disturbances (MACDIS)**

In language similar to the Insurrection Act, Military Assistance for Civil Disturbances addresses the use of the military to assist local and state authorities in mitigating domestic disturbances. DoD Directive 3025.12 acknowledges state and local government responsibility for protecting life and property and maintaining law and order in the civilian community. The directive dictates that the authority to use DoD forces must be specified through Presidential

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<sup>43</sup> U.S. Department of Defense, DoD Directive 3025.1, Military Support to Civil Authorities

<sup>44</sup> International and Operational Law Department, *Operational Law Handbook*. (Charlottesville, Virginia: The Judge Advocate General's School, 1997), 21-2

Executive Order. State National Guard units serving under the governor can enforce state law. Furthermore, the directive specifies that federal forces “shall not be placed under the command of National Guard authorities who are not on federal active duty.” This allows federal forces to conduct MACDIS operations in support of National Guard troops still under Title 32 with a dual hatted Title 10/32 Commander. The President may order the State Guard into Federal service under Title 10 to ensure unity of command and control<sup>45</sup> during the MACDIS operation in extreme circumstances likely under imposition of the Insurrection Act. However, the decision to remove a governor’s control over their state Guard raises political implications and concerns that the President must balance with the need to establish unity of command and resolve the crisis.

### **DoD Policy Directive 3025.15 Military Assistance to Civil Authorities**

DOD Policy Directive 3025.15 specifies that the Department of Defense “shall cooperate with and provide military assistance to civil authorities as directed by and consistent with applicable law, Presidential Directives, Executive orders, and this Directive.” Military assistance is evaluated not solely on the legality of the response. Assistance is evaluated by the potential for lethal force by or against DOD Forces, the risk of safety to the same, and cost to DOD and appropriateness of the mission. The directive also addresses the impact to readiness of the DOD response. As written such a response is secondary to the DOD’s primary mission. The language regarding to readiness underscores the DOD’s mission to defend the homeland and meet obligations specified in the National Response Plan in the event of an incident of National significance.<sup>46</sup> Knowing the potential threats facing the homeland, assigning forces to meet

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<sup>45</sup> “Regardless of whether DOD is conducting HD or CS, military forces will always remain under the control of the established Title 10, 32, or state active duty military chain of command.” (JP 3-26)

<sup>46</sup> DoD Policy Directive 3025.15

DOD's responsibilities and maintaining their readiness to respond domestically is a mission that if anticipated is planned and resourced.<sup>47</sup>

Though often muddled and subject to interpretation and debate, sufficient legal authority exists to permit a DoD response within guidelines of authority for DSCA. The intent of this authority is to limit the application of military forces in a domestic law enforcement role. Commanders at all levels tasked to respond to a disaster must understand the statutes authorizing their roles and responsibility in order to plan effective operations. The Posse Comitatus Act (PCA) and Insurrection Act establish the legal authority shaping the basic limits and constraints for the military in domestic law enforcement. Though not a desired mission for active duty forces, National Guard troops serving in a Title 32 capacity are empowered to enforce state laws in the event of a disaster. The Stafford Act establishes the process for disaster response and identifies DoD as the provider of last resort. It is important to note that under the Homeland Security Act and HSPD-5, DHS leads the federal government response and is accountable for creating unity of effort with state and local authorities in a disaster. That unity of effort extends to the DoD total force (active, Guard, and reserve) in their supporting role. Points of friction exist under current law with regard to command and control authority and employment over Title 10/32 forces, prior planning and resourcing of those disaster plans, and the role of the states and Federal government. U.S. citizens expect all levels of government to respond quickly to a disaster regardless of that friction. However, rather than clear statutory authorization for DSCA achieving unity of command and effort in any future disaster hinges on interpretation and collaboration.

## **DISASTER RESPONSE PROTOCOLS**

Three components comprise the National Incident Management System: the Incident Command System (ICS),<sup>48</sup> interagency coordination systems, and the public information system.

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<sup>47</sup> Ibid.

NIMS distinguishes between command and coordination authority, with command defined as “the act of directing, ordering, or controlling by virtue of statutory, regulatory, or delegated authority.” NIMS defines “coordinate” as “to advance systematically an analysis and exchange of information among principals who have a need to know certain information to carry out specific incident management responsibilities.” As specified in HSPD-5, the Secretary of Homeland Security is required to develop, submit for review to the Homeland Security Council, and administer a National Incident Management System (NIMS). NIMS establishes the framework for a consistent nationwide approach across the Federal, State, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents. The challenge not only for DHS but also for DoD is to establish the interoperability and compatibility among Federal, State, and local capabilities needed to achieve the intended synchronization. The agencies are also far from establishing a common set of “principles, terminology, and technologies covering the incident command system; multi-agency coordination systems; unified command; training; identification and management of resources.”<sup>49</sup>

## **National Response Framework**

In December of 2004, the Department of Homeland Security issued the National Response Plan. The purpose of the document was to “establish a comprehensive, national, all-hazards approach to domestic incident management across a spectrum of activities including prevention, preparedness, response, and recovery.”<sup>50</sup> The NRF presents the guiding principles that enable all response partners to prepare for and provide a unified national response to disasters and

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<sup>48</sup> FEMA defines the Incident Command System (ICS) as “a standard, on-scene, all-hazards incident management system already in use by firefighters, hazardous materials teams, rescuers and emergency medical teams. The ICS has been established by the NIMS as the standardized incident organizational structure for the management of all incidents.”  
<http://www.fema.gov/txt/nims/nimsicspositionpaper.txt>.

<sup>49</sup> HSPD-5. [http://www.nimsonline.com/presidential\\_directives/hspd\\_5.htm](http://www.nimsonline.com/presidential_directives/hspd_5.htm), (accessed December 10, 2008).

<sup>50</sup> National Response Plan, 2

emergencies. DHS revised the NRP in 2008 changing the title of the document to the National Response Framework (NRF). Intended to inform first responders and emergency management officials at all levels, “The Framework is written for senior elected and appointed leaders, such as federal department or agency heads, governors, mayors, tribal leaders, and city or county officials – those who have a responsibility to provide an effective response to preserve the safety and welfare of the community.”<sup>51</sup> The NRF through NIMS provides the structure and mechanisms for national level policy and operational direction for federal support to State and local incident managers and for exercising direct federal authorities and responsibilities.

Under this framework, DoD provides support to all 15 Emergency Support Functions (ESFs see Appendix 1) that govern the coordination of the federal interagency disaster support. The ESFs coordinate federal assistance under specific mission areas. Under the current structure, DoD organizations must be prepared to respond to all fifteen mission tasks if the assets are available. Among military organizations the Army Corps of Engineers (USACE) is designated lead coordination agency responsible for ESF #3 (Public Works and Engineering). The next section of the monograph will argue for several recommended changes in how DoD sources support to the ESFs. The Emergency Management Assistance Compact exists outside of the scope of the NRF but is approved by DHS and assists in coordinating disaster response resources.

## **EMAC**

The Emergency Management Assistance Compact (EMAC) approved by Congress in 1996 as Public Law 104-321, allows member states and Puerto Rico, the U.S. Virgin Islands, Guam, and the District of Columbia<sup>52</sup> to request aid from other states after they have exhausted their organic resources or when the state lacks a specific capability required for response. Managed by the National Emergency Management Agency, EMAC owns no resources nor can it

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<sup>51</sup> National Response Framework

<sup>52</sup> EMAC Official web site. <http://www.emacweb.org/1589> (Accessed October 10, 2008)

direct participating states to respond. EMAC is a compact to facilitate inter-state support. EMAC evolved from mutual aid agreements between southern state governors in response to potentially devastating hurricanes. Requesting support from the compact begins when a state governor declares an emergency and requests help from the compact. The process does enable input into the system if DHS/FEMA activates the National Response Coordination Center to coordinate the federal response and recovery operations. During a disaster response, DHS could then request a coordination element from EMAC to help synchronize resource requests from states. The framework clarifies liability and funding issues for responding out of state resources, with the preponderance of resources being State National Guard forces. With regard to command and control issues, EMAC eliminates conflict between states by transferring command and control of the requesting state Adjutant General, with Guard forces remaining under Title 32.

The compact provides for 114 Disaster response mission packages tailored by function under ESF. The ESF sets a standard force, required capability, support requirements, and cost per day for employment. The support packages range in scale from a #47- A Small Diameter (<12”) Water Main Repair Support Package to #26- A Joint Task Force. The state requesting assistance bears the cost for those out of state forces that respond, depending on the level of federal relief for disaster assistance.<sup>53</sup>

The heavy reliance on the Guard for OIF/OEF missions has left some State armories empty in times of state need. EMAC to date has provided an excellent framework for single state emergencies not needing DoD support. It has compensated for a lack of organic state resources occasioned by deployments. Unaffected neighboring states can quickly provide the resources required to augment overwhelmed state responders.<sup>54</sup> However, as States are not required to assist other states unless they are able, a regional disaster such as a New Madrid earthquake or a

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<sup>53</sup> EMAC Official web site. <http://www.emacweb.org/1588> (Accessed October 10, 2008)

<sup>54</sup> Christine Wormuth, *The Future of the National Guard and Reserves* (Washington, D.C.: Center for Strategic and International Studies, 2006), 74.

National event such as Pandemic Flu limits the effectiveness of this compact because EMAC is not equipped as the responsible agency for determining requirements to manage an incident.

The compact could prove at best a hindrance during a national emergency. EMAC has a place for majority of emergencies - but the threshold for use in a National disaster and enforcement to obtain required assets lacks statutory regulation. The process leaves DoD (with the majority of assets identified by the compact residing in the Guard) out of the request authorization for concurrence of use in a national emergency. At its worst, EMAC complicates DoD efforts to coordinate a Title 10/32 total response with the National Guard while states without priority for response prematurely request or hoard assets independently from the compact. If the magnitude of the disaster exceeds the capability of the state and potentially the capability of EMAC, a governor can request assistance from DHS and DoD.

### **The Process for Requesting DoD Assistance**

A request for a DoD response begins at the local level. For minor incidents that exceed state capacity, the governor can request assistance from EMAC. As noted before, most of these resources are in the form of mobilized National Guard forces. Simultaneously the governor can initiate a disaster declaration and request that the President declare emergency or major disaster.<sup>55</sup> The official request process is repeated from the State Emergency Operations Center (EOC) to the DHS/FEMA Joint Field Office (JFO). The JFO led by the Unified Command Group<sup>56</sup> and

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<sup>55</sup> As defined by the NRF: A Presidential major disaster declaration triggers long-term Federal recovery programs, some of which are matched by State programs, and designed to help disaster victims, businesses, and public entities. An emergency declaration is more limited in scope and without the long-term Federal recovery programs of a major disaster declaration. Generally, Federal assistance and funding are provided to meet a specific emergency need or to help prevent a major disaster from occurring.

<sup>56</sup> Unified Coordination Group. The JFO is led by the Unified Coordination Group, which is comprised of specified senior leaders representing State and Federal interests, and in certain circumstances tribal governments, local jurisdictions, the private sector, or NGOs. The Unified Coordination Group typically consists of the Principal Federal Official (if designated), Federal Coordinating Officer (FCO), State Coordinating Officer, and senior officials from other entities with primary statutory or jurisdictional responsibility and significant operational responsibility for an aspect of an incident (e.g., the Senior Health Official, Department of Defense representative, or Senior Federal Law Enforcement Official if assigned). Within the Unified Coordination Group, the FCO is the primary Federal official responsible for coordinating, integrating, and synchronizing Federal response activities.

specifically the Federal Coordinating Officer (FCO) determines sourcing and prioritizes resources within the ESF framework. The FCO, through the JFO construct, collaborates with the various Federal agencies and the states in a disaster to achieve unity of effort.<sup>57</sup> NORTHCOM's representative in the JFO is the Defense Coordinating Officer (DCO). The DCO is normally a Colonel and represents DoD as a liaison to the interagency in each of the ten FEMA regions. In addition, in April 2009 NORTHCOM certified an 11<sup>th</sup> DCO and support element to serve as a back up to the ten assigned to FEMA regions.<sup>58</sup> Once the FCO and State Coordinating Officer (SCO) determine that military capability is required, they request assistance from the DCO. The DCO is responsible then to determine if the request is appropriate and if DoD is capable of providing the request. Given a request for forces and Secretary of Defense (SECDEF) approval Joint Forces Command (JFCOM) fills the request.

The level of DoD command involved is based on the scale of the incident and forces allotted. The DCO can lead small incident responses provided the force does not exceed his capacity to command and control. If the level exceeds the DCO's capability NORTHCOM can establish a Joint Task Forces (JTF). Normally NORTHCOM will designate Army North to establish and lead responding DoD forces. Though ARNORTH is not sourced with a standing JTF, it can establish the base for one from one of its two Operational Command Posts.<sup>59</sup> The commander of the responding JTF is then leads all responding forces provided by JFCOM. Unless National Guard forces are called to Federal service by the President under Title 10, they reside under the command of the state governor and the TAG. This separate chain of command in Title 32 status has the potential to impede unity of effort. But as previously discussed, the Title 32

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<sup>57</sup> United States Department of Homeland Security. *National Response Framework*. <http://www.fema.gov/emergency/nrf/>. Washington, D.C.: Homeland Security, (January 2008), 51-68.

<sup>58</sup> Patti Bielling. U.S. Army North helps put hurricane plans to the test. April 8, 2009. NORTHCOM Official Website. <http://www.northcom.mil/News/2009/040909.html> (accessed April 28, 2009)

<sup>59</sup> JFLCC OPLAN 3500-08 dated August 8, 2008.

chain of command does offer the state governor the flexibility to use the Guard to enforce State law. In a potential disaster response, the two separate chains of command, one Guard and one active duty, could execute operations simultaneously under different legal authorities but under the supervision of DHS.

The National Response Framework through NIMS provides the structure and mechanisms for response. The intent of the system is to manage disasters at the lowest level and only assisted by the federal agencies when state capabilities overwhelmed. DoD responds as part of the federal response as a supporting agency. Though responsibilities under the ESFs are under revision by DHS it is unclear to what extent DoD must source support within the ESF construct.<sup>60</sup> Under the current structure and provisions of the Stafford Act DoD cannot do so until formally requested. The framework is meant to minimize a federal response. As most disasters do not exceed the scope of state resources, the NRF remains sufficient to deal with the majority of localized state disasters. However, the NRF structure fails to provide for a timely and resourced response to catastrophic regional disasters. Similarly, EMAC solves the majority of single state and localized disasters but remains insufficient for regional or national disasters. Given an understanding of the current protocols for response, the next section examines the challenges associated with NORTHCOMs integration and planning.

## **INTEGRATION AND INTERAGENCY CHALLENGES**

Several factors impact NORTHCOM and DoD's ability to integrate within the interagency. These factors serve to hamper the military's ability to communicate, plan, and execute. Aside from differences in organization, significant training is required to overcome institutional barriers. Doctrine provides a basis for action, but education and training provide the ability to understand the framework in which DoD supports DSCA. Integrated planning and

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<sup>60</sup> GAO, *Homeland Defense: U.S. Northern Command Has Made Progress but Needs to Address Force Allocation, Readiness Tracking Gaps, and Other Issues*, GAO-08-251 (Washington, D.C.: GAO, April 2008), 22.

exercises provide a bridge to build mutual respect across all levels of government. Establishing a common interagency framework for language, education and training, planning systems, and readiness prior to a disaster provide the ability to overcoming interagency challenges and friction during a response.

### **The Common Language of Disaster Response**

DoD forces do not speak the same vocabulary as the first responders that they will likely encounter during a disaster response. Without training in the vocabulary of Incident Command, DoD forces will likely find themselves confused when dealing with first responders. It is not just military jargon and acronyms, but the planning systems and different definitions of words associated with disaster that can cause misunderstanding between forces. The DoD definition of consequence management is problematic when compared to the differences with DHS language. The DoD definition encompasses both natural and manmade disasters, not just terrorist actions. At the same time, the NRP uses the terms “consequences” and “effects” interchangeably, when considering the outcomes for both natural disasters and manmade disasters, including those caused by terrorists. The CALL hand book goes so far as to say- “that if the staff officer encounters, the term consequence management, he should ask for a definition.”<sup>61</sup> Words have meaning, they provide a common language and understanding. But not when the two federal agencies likely to respond to a disaster operate off different dictionaries. Education can bridge the differences in vocabulary between civilian and military terminology. DoD doctrine for DSCA must match the language of the agencies<sup>62</sup> supported in order to establish a common framework between responders.

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<sup>61</sup> CALL Disaster Officer Handbook, 23.

<sup>62</sup> “Plans are difficult to synchronize and measure since format, lexicon, and specificity vary widely across the homeland security community. A Target Capabilities List (TCL) and Universal Task List (UTL) were developed in support of HSPD-8. These capabilities and tasks provide a common reference and language for planning.” U. S. Department of Homeland Security. *Nationwide Plan Review Phase 2 Report*, June 16, 2006. [http://www.dhs.gov/xlibrary/assets/Prep\\_NationwidePlanReview.pdf](http://www.dhs.gov/xlibrary/assets/Prep_NationwidePlanReview.pdf) (accessed 20 April 2009), 71.

## **Training and Education Requirements for Disaster Planning**

“Having an adequate number of properly trained personnel to ensure that missions are successfully planned is a decisive factor in the success of any mission. NORTHCOM officials have been attempting to establish and maintain a cadre of personnel in the active military with knowledge and experience in NORTHCOM planning, homeland defense, civil support, and interagency planning and coordination that go beyond the basic level training the military provides in joint planning.”<sup>63</sup>

In an attempt to overcome gaps for planner’s training, NORTHCOM initiated a cooperative effort with the University of Colorado at Colorado Springs and the Naval Postgraduate School to create the Homeland Security/Defense Education Consortium. This consortium focuses on promoting education, research, and cooperation related to the homeland security mission. While several institutions nationwide offer similar degrees, the Naval Postgraduate School has a master’s degree program offered through its Center for Homeland Defense and Security. The NPGS program designed in cooperation with FEMA includes training in strategy development, organizational planning, and aspects of interagency coordination. While available to NORTHCOM personnel, there is no command requirement for NORTHCOM staff to attend any of these courses.<sup>64</sup> Army and Joint planners are proficient in JOPP and MDMP, but those planning processes do not provide the required skills for disaster planning acquired either through civilian experience or advanced education. Successfully executing disaster planning without the knowledge or experience as a foundation handicaps interagency planning across all levels of government to prepare prior to a disaster.

## **The Challenge of Interagency Planning and Anticipating Requirements**

Currently there is no statutory oversight to validate and exercise disaster response plans. DoD and DHS cannot anticipate and establish accurate contingency plans without knowing the

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<sup>63</sup> GAO, *U.S. Northern Command Has Made Progress but Needs to Address Force Allocation, Readiness Tracking Gaps, and Other Issues* GAO-08-251 (Washington, D.C.: GAO, April 2008), 33.

<sup>64</sup> *Ibid*, 34.

resources required in the event of a major disaster. Developing these plans requires a high level of interagency coordination and planning in order to prevent a fractured response.

When a catastrophic event overwhelms a single jurisdiction or has region-wide impact, effective response hinges on combined action and pooling of resources. Our large homeland security community is characterized by divided and decentralized planning responsibilities and highly diversified administration. Unity of effort is difficult without a consistent and logical way to synchronize combined Federal, multi-State, and multijurisdictional actions. Combined planning represents the single convergence point where Federal, State, and local concepts and resources can be translated into specific patterns of action and synchronized to achieve unity of effort. This point is the “center of gravity” for modernization.<sup>65</sup>

NORTHCOM’s current plans are “CONPLANS rather than more detailed OPLANS, they are not focused on specific scenarios and discrete sets of required capabilities needed to accomplish objectives.” This methodology fails to identify the requirements and capabilities needed for a response prior to a disaster. Sourcing the CCMRF BCTs provides a force ready to deploy with known capabilities reducing response time to a disaster. However, the current 26 Pre-scripted Mission Assignments still reflect a lag in identifying forces for response. Under the current system with units in various states of deployment and reset in the ARFORGEN cycle, there is no means to plan for the sourcing of CONPLANS based on requirements needed to mitigate the disaster.<sup>66</sup>

Dr. Waugh, a Professor of Public Administration Andrew Young School of Policy Studies Georgia State University, in his testimony to Congress argued:

“Reconciling state and local plans with the national plans has been difficult in many cases because the plans were not written by people who understand emergency management at the state and local levels. Some of the assumptions made by the authors of the NRF are accurate in some states and communities and not accurate in others. For example, one of the problems noted in the after-action reports of the Emergency Management Assistance Compact was differences in

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<sup>65</sup> U. S. Department of Homeland Security. *Nationwide Plan Review Phase 2 Report*, June 16, 2006 [http://www.dhs.gov/xlibrary/assets/Prep\\_NationwidePlanReview.pdf](http://www.dhs.gov/xlibrary/assets/Prep_NationwidePlanReview.pdf) (accessed 20 April 2009), xii.

<sup>66</sup> GAO, *Homeland Defense: U.S. Northern Command Has Made Progress but Needs to Address Force Allocation, Readiness Tracking Gaps, and Other Issues*, GAO-08-251 (Washington, D.C.: GAO, April 2008), 20.

the authority delegated to local officials by their states. A national plan has to accommodate those kinds of differences.”<sup>67</sup>

His testimony highlights the problems identified in the DHS Phase 2 Report of the Nationwide Plan Review.<sup>68</sup> DHS found outmoded planning products, processes, and education levels are hindering the creation of effective disaster plans. “The majority of the Nation’s current emergency operations plans and planning processes cannot be characterized as fully adequate, feasible, or acceptable to manage catastrophic events as defined in the National Response Plan (NRP).”<sup>69</sup> In January 2008, Congress directed that DoD and DHS work to determine the capabilities that DoD can provide in support the National Response Framework. NORTHCOM cites the use of DCOs and Regional State EPLOs to facilitate the coordination of emergency response plans between the combatant commands and states. However, GAO found that “Fifty-four percent of the TAGs reported that they believe that NORTHCOM is either slightly or not at all familiar with their states’ plans.”<sup>70</sup> The clear lack of understanding between the State TAGs, the NGB, and NORTHCOM highlight need for change to the current system. Without nested, validated, and accurate state plans, NORTHCOM cannot identify specific requirements or plan to source forces needed for a response.<sup>71</sup>

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<sup>67</sup> Dr. William L. Waugh, Jr. Testimony before the Subcommittee on Economic Development, Public Buildings, and Emergency Management, Committee on Transportation and Infrastructure, United States House of Representatives. September 11, 2007. <http://www.iaem.com/committees/GovernmentAffairs/documents/waugh091107.pdf> (accessed 26 April 2009).

<sup>68</sup> The Nationwide Plan Review reviewed and assessed the status of catastrophic and evacuation planning in all 50 states and 75 of the nation’s largest urban areas.

<sup>69</sup> U. S. Department of Homeland Security. *Nationwide Plan Review Phase 2 Report*, June 16, 2006. [http://www.dhs.gov/xlibrary/assets/Prep\\_NationwidePlanReview.pdf](http://www.dhs.gov/xlibrary/assets/Prep_NationwidePlanReview.pdf) (accessed 20 April 2009), ix.

<sup>70</sup> GAO, *Homeland Defense: Steps Have Been Taken to Improve U.S. Northern Command’s Coordination with States and the National Guard Bureau, but Gaps Remain*, GAO-08-252 (Washington, D.C.: GAO, April 2008), 6.

<sup>71</sup> GAO: *Homeland Defense: U.S. Northern Command Has Made Progress but Needs to Address Force Allocation, Readiness Tracking Gaps, and Other Issues*, GAO-08-251 (Washington, D.C.: GAO, April 2008), 22.

Ultimately, DoD and DHS must synchronize the 54 state plans each due to the regional nature of man-made and natural disasters. “Catastrophic incidents by their very nature cut across geographic and political boundaries. Synchronization of combined federal, multi-state, and multi-jurisdictional actions and capabilities can only be achieved when modernization equips and empowers planners to collaborate in a manner that matches the boundary-spanning nature of catastrophes.”<sup>72</sup> To ensure nesting and sourcing of plans a statutory requirement is needed in order to hold all levels and agencies of government accountable.<sup>73</sup> That failing, the gaps in planning will persist increasing the chance for a dysfunctional response. Response to any mission hinges on the readiness and availability of units to execute and the ability of higher headquarters to understand the capabilities required to source the mission.

### **ARFORGEN and Readiness Reporting**

Joint Task Force Civil Support (JTF-CS) is NORTHCOM’s subordinate command for DSCA and consequence management. As the higher headquarters responsible for tracking the readiness of its subordinate brigade, JTF-CS “routinely uses the CCMRF’s mission-essential tasks, the existing DoD readiness system, and direct interaction with Joint Forces Command and Army officials to monitor the readiness of CCMRF forces.”<sup>74</sup> Other than the CCMRF BCT, there is no METL assessment requirement for DSCA tasks or applicable readiness criteria to assess a unit under the Defense Readiness Reporting System (DRRS). In the event of a disaster requiring a large total force response, JFCOM and NORTHCOM have means to determine the capability of units to conduct DSCA missions. Units in various stages of the ARFORGEN cycle may or may

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<sup>72</sup> U. S. Department of Homeland Security. *Nationwide Plan Review Phase 2 Report*, June 16, 2006 [http://www.dhs.gov/xlibrary/assets/Prep\\_NationwidePlanReview.pdf](http://www.dhs.gov/xlibrary/assets/Prep_NationwidePlanReview.pdf) (accessed 20 April 2009), 79.

<sup>73</sup> President Bush in December 2007 issued an annex to the 2003 Homeland Security Presidential Directive 8 that establishes a standard and comprehensive approach to national planning for homeland security. Included in the new instructions is a requirement that the federal government more closely integrate federal, state, local, and tribal plans with respect to capability assessments.

<sup>74</sup> GAO, *Homeland Defense: U.S. Northern Command Has Made Progress but Needs to Address Force Allocation, Readiness Tracking Gaps, and Other Issues*, GAO-08-251. (Washington, D.C.: GAO, April 2008), 28.

not be C1 for their wartime mission. Those same units could potentially respond and support civil authorities even though not C1 for their core or deployment METL. The lack of force readiness information handicaps crisis action planning.<sup>75</sup> If DoD views DSCA as a core mission, assessing and tracking DSCA readiness of the total force is required.

NORTHCOM's role continues to evolve as it works to form collaborative relationships with local, state, and other agencies within the Federal Government and the DoD. Change is required if DoD is to embrace DSCA as a core mission. First, DoD must review the way it trains and educates planners at the operational level staffs to enable them to work across the interagency successfully. Second, requires DoD and NORTHCOM to increase coordination with states and DHS to review of disaster plans in order to identify shortfalls and requirements. Third, requires a change in the way DoD tracks and reports readiness. The inclusion of DSCA in the DRRS provides metrics to answer requests for forces better in unforeseen catastrophic disasters.

## **FILLING THE CAPABILITIES GAP**

### **The National Guard**

The Strategy for Homeland Defense and Civil Support states civil support is a responsibility of the total force.<sup>76</sup> The National Guard and Reserves are well suited to perform DSCA missions dispersed in communities across the nation. Additionally, the variety of civilian skills possessed by National Guard and Reserve members enhances the capability to respond. The Guard's experience and working relationships with civil authorities are developed during state call ups in response to emergencies.<sup>77</sup> Guard units routinely demonstrate the unique capability to mobilize quickly during a local crisis. However, if those units are to become a key component of

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<sup>75</sup>Christine E. Wormuth, *Managing the Next Domestic Catastrophe. The Beyond Goldwater-Nichols Phase IV Report*. Washington, D.C.: Center for Strategic and International Studies, 2008, 11.

<sup>76</sup>Department of Defense. *Strategy for Homeland Defense and Civil Support*. June 2005, 32.

<sup>77</sup>National Guard Bureau, NGR 500-1, *National Guard Domestic Operations* (Washington, DC: Government Printing Office, 2008), 2.

the DoD response, they require additional training, increased readiness, and integration into National disaster planning.

The reliance on the National Guard is dependent on the assumption that these citizen Soldiers are not victims of the incident themselves, or like many serving members of the National Guard, already committed to the response as first responders or health professionals. While the civilian professions provide the Guard Soldiers with additional skills needed in a disaster, civilian employment creates a duty conflict when they themselves are the first responders in their civilian professions or volunteer duties. No data exists to document the total percentage of Guardsmen that serve as firefighters, police officers, or health professionals with duties that may require them to serve their communities first. On 9/11 as 1-101 Cavalry mobilized and deployed to Manhattan, approximately 100 members of the unit were NYC police officers or firefighters that remained serving with their respective agencies. Fortunately, two key leaders in the Squadron, both police officers and company commanders opted to report to the mobilization station. Key leaders' aside, the absence of 100 members of a Squadron that deployed 400 Soldiers over a two-week period is a significant personnel shortage.<sup>78</sup> These citizen Soldiers represent a tremendous capacity, often with training from their professional careers that benefits the unit during deployment in support of state missions and disasters. The planning factors for National Guard and Reserve unit employment must account for personnel that cannot mobilize due to requirements as first responders. The shortfalls must be assessed for their impact on readiness for DSCA missions.

Personnel availability is only part of the Guard's challenge for response. Equipment availability is also critical for disaster response. Key findings from the Commission on the National Guard and Reserves and the GAO highlight the National Guard shortages in critical dual-use (CDU) items; items needed for both wartime missions and domestic emergencies. Like many active duty units, National Guard units returned to home station and left equipment in

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<sup>78</sup> Eric Dunn, Answering the 9-11 Call, A New York National Guard Unit Rushes into Manhattan Chaos. *Armor Magazine*. January-February 2002.

theater.<sup>79</sup> Units not scheduled for deployment have a much lower level of equipment and supply readiness which effects training and overall unit readiness. Critically important are the lack of vehicle and radio shortages. The National Guard and Reserves is currently short 64,800 HMMWVs and Medium Trucks and has a shortage of 50,800 SINCGARS radios.<sup>80</sup> Though the Commission Recommendation #45 argued for replacement of CDU items by 2013 and restoration of all units to C-1 by 2015, it noted that the Army does not anticipate fully equipping the Army Reserve and Army National Guard until 2019. The process of fully equipping not only the Guard but also active duty forces is tied to the constraints of DoD funding and on-going commitments to Iraq and Afghanistan. However, the Guard cannot become the backbone for disaster response if it does not have the required equipment. DoD has decided to meet a portion of the DSCA requirement by augmenting the National Guard Weapons of Mass Destruction –Civil Support Teams (WMD-CST) at the state levels with an active duty brigade.

### **Tailoring the active force to the mission- CCMRF**

In 2007, Deputy Defense Secretary Gordon England signed a directive approving more than \$556 million over five years to fund the establishment of the Consequence Management Response Forces. The planning assumed a WMD event, in which “an incident could lead to thousands of casualties, more than 1 million evacuees and contamination of as many as 3,000 square miles, about the scope of damage Hurricane Katrina caused in 2005.”<sup>81</sup> When 3ID redeployed from Iraq in 2008, 1<sup>st</sup> Brigade was removed from the deployment schedule for DSCA support. 1<sup>st</sup> BCT/3ID represents the first of three CBRNE CCMRF BDEs DoD intends to tailor

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<sup>79</sup> Steve Bowman and Lawrence Kapp, and Any Belasco. *CRS Report to Congress, Hurricane Katrina: DOD Disaster Response*. September 2005. <http://www.fas.org/sgp/crs/natsec/RL33095.pdf> (accessed January, 14, 2008), 15.

<sup>80</sup> Commission on the National Guard and Reserves, *Transforming the National Guard and Reserves into a 21<sup>st</sup> Century Operational Force: Final Report to the Congress and Secretary of Defense*. January 31, 2008, 228.

<sup>81</sup> Spencer S. Hsu and Ann Tyson, “Pentagon to Detail Troops to Bolster Domestic Security.” *Washington Post* (December 1, 2008): A01.

meet the potential threat. According to the NORTHCOM Commander Gen. Gene Renuart “we’ll have an organized force, a trained force, an equipped force, a force that has adequate command and control and is on quick response – 48 hours – to head off to a large-scale nuclear, chemical, biological event that might require Department of Defense support.”<sup>82</sup> The CBRNE Consequence Management Response Force, or CCMRF, is a task force of 4,700 joint personnel that would deploy as the Department of Defense’s initial response force for a CBRNE. The unit is configured to conduct search and rescue, decontamination, medical, aviation, communications and logistical support. The CCMRF is composed of three functional task forces – Task Force Operations (BCT), Task Force Medical and Task Force Aviation with JTF-CS providing the operational headquarters in the event of a response. Optimally, sourcing for these task forces should reside outside of the ARFORGEN cycle. Removing these task forces from ARFORGEN allows for training and equipping enabling Soldiers to build on the skills required to accomplish their unique mission.

### **METL and Mindset Crosswalk in Full Spectrum Operations**

The argument exists that Army leaders possess a wealth of knowledge from on the job training in combat and stability operations following six years of war. The first CCMRF, 1st BCT/3ID commander Col. Roger Cloutier noted during training: “I have watched them train for this mission, and there is a lot of cross-over, as far as humanitarian efforts and restoring infrastructure, between what they did in Iraq and what they are tasked with now.”<sup>83</sup> Nevertheless, enforcing formal authority in a combat zone to facilitate the management of services and critical infrastructure requires a completely different mindset and approach. “While soldiers’ combat

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<sup>82</sup> NORTHCOM Official Web site. <http://www.northcom.mil/news/2008/093008.html> (accessed April 11 2009)

<sup>83</sup> Frenchi Jones, “1st BCT Continues Domestic Action Training.” *Coastal Courier* (January 9, 2009) <http://www.coastalcourier.com/news/archive/11008/> (accessed 28 April 2009)

training is applicable some nuances don't apply."<sup>84</sup> Critical to the success of working local and state officials, and other USG agencies requires a more informal leadership approach. As the supporting agency, DoD forces require a mindset shift that enables adaptive and responsive thinkers capable of successfully integrating DSCA operations with supported civilian agencies. At the tactical level, this is far from a subtle shift but required to achieve success. To shift METL and mindset also requires a change to assessment of readiness for the Homeland Security mission. Knowing where DoD fills required resources into the NRF through the Essential Support functions requires forward thinking based not just on Pre-scripted Mission Assignments but on validated and sourced disaster plans.

### **Recommendation for DoD to better support ESFs**

As DoD assesses its ability to comply with requirements specified by the ESFs, it must determine where it can assist best and measure the cost of funding targeted to build the capacity and shape its role in the policy discussion.

“In catastrophic disasters, tens of thousands or hundreds of thousands of lives are immediately at risk. State and local resources may be exhausted from the onset and government leaders unable to determine or communicate their priority needs. And unlike New York after 9/11 there were few place communities to turn for immediate help after Hurricane Katrina. The small communities around cities like New Orleans, Biloxi, and Baton Rouge had little extra capacity before the storm; now they had their own problems.”<sup>85</sup>

Though DoD brings substantial capabilities to a disaster response its ability to source all requirements is balanced with wartime requirements. Analyzing where DoD can better support the ESFs with a total force response to a disaster requires an analysis of not only force structure and ongoing commitments but the unique surge capabilities not replicated in other government

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<sup>84</sup> Gina Cavallaro, “Brigade homeland tours start Oct. 1, 3rd Infantry’s 1st BCT trains for a new dwell-time mission. *Army Times*. September 30, 2008. [http://www.armytimes.com/news/2008/09/army\\_homeland\\_090708](http://www.armytimes.com/news/2008/09/army_homeland_090708) (accessed April 28 2009).

<sup>85</sup> James J. Carafano, *The Pentagon’s Inadequate Vision for Safeguarding U.S. Soil: What’s Needed from the Reserve Components*. (Washington, D.C.: Heritage Foundation. March 16, 2006), <http://www.heritage.org/Research/NationalSecurity/hl975.cfm> (accessed January 14, 2009).

agencies. As DoD examines its role in supporting ESFs, DoD can leverage three critical areas by providing forces to assist first responders and save lives within the first critical days of an incident: Communications, Firefighting, and Search and Rescue.

### **ESF 2 Communications and Interoperability Challenges**

“The immense storm almost completely destroyed the region’s communications infrastructure. More than 3 million telephone customers lost service, more than 2,000 cell phone towers were knocked out, and thirty-eight 911 call centers were lost.”<sup>86</sup>

Hurricane Katrina caused the complete loss of communications and ultimately crippled the ability of first responders to communicate with each other and dispatch centers.<sup>87</sup> The wholesale loss of cell towers and dispatch repeaters further complicated the disaster response. The GAO noted that “first responder groups each have different professional practices, public safety missions, emergency response procedures, communication protocols, and radio frequencies. These differences have created a variety of challenges to effective interoperable communications among first responders.”<sup>88</sup> The DHS is tasked as lead for ESF 2 (National Communications System) with the DoD playing a supporting role. However, following Katrina the GAO argued “DOD’s plan addressed internal military communications requirements but not the communication requirements of communities affected by the disaster...while some deployed National Guard assets were underutilized because the sending states placed restrictions on their use.”<sup>89</sup> DoD though not responsible for ESF 2 is better positioned to support operations across a regional disaster.

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<sup>86</sup> U.S. Congress. *A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, 109th Congress*. February 15, 2006. <http://www.c-span.org/pdf/katrinareport.pdf> (accessed December 10, 2008).

<sup>87</sup> GOA. *First Responders, Much Work Remains to Improve Communications Interoperability*. GAO 07-301. (Washington, D.C.: GAO, April 2007), 5.

<sup>88</sup> *Ibid*, 6.

<sup>89</sup> GAO. *Hurricane Katrina, Better Plans and Exercises Need to Guide the Military’s Response to Catastrophic Natural Disasters*. GAO-06-808T. (Washington, D.C.: GAO, May 25, 2006), 8.

Communications between agencies operating on different systems requires organization to share systems and operators through liaison teams in order to pass information, orders, and inform situational awareness amongst agencies. Two key challenges exist for DoD to bridge the communications interoperability and better support the federal response. First, is understanding how and who DoD plugs in with to achieve interoperability with local, state, and other federal agencies. In the event of total system failure, responding DoD forces can establish FM architecture and rely on tactical satellite communications (TACSAT) to facilitate C2 and assist first responders through joint command posts until service is restored.

Second, is identifying and planning for anticipated requirements prior to a disaster. “Interoperability in the context of public safety communications systems refers to the ability of first responders to communicate with whomever they need to (including personnel from a variety of agencies and jurisdictions), when they need to, and when they are authorized to do so.”<sup>90</sup> This capability exists not just with the active duty, but within Guard signal units already prioritized as one of the Guards ‘Top 10’ resident capabilities for states. Anticipating requirements for a disaster is determined prior during disaster planning, through training exercises with other agencies, and through validation of state emergency plans. Though requirements to support specific disaster plans requires refinement, DoD remains the Federal agency best postured to support ESF2. This capability will enable other agencies with situational awareness and assist first responders pending restoration of communications architecture.

#### **ESF4 and ESF9: DoD Firefighters as mutual aid surge capability**

ESF4 tasks DOD firefighters to protect Federal land, and also to assist in firefighting operations on nonmilitary lands, i.e. off post with personnel, equipment, and supplies under the

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<sup>90</sup> GAO. *First Responders, Much Work Remains to Improve Communications Interoperability*. GAO 07-301. (Washington, D.C.: GAO, April 2007), 5.

terms of the existing interagency agreements. ESF 9 entails Search and Rescue, with FEMA as the lead agency sourced by the 28 Urban Search and Rescue Teams.<sup>91</sup> As part of the total force sourcing to support the ESFs DoD can provide additional assistance to ESF4 and ESF 9. The capability is resident among all the services, comprised of active duty, reserve, and DoD civilian Fire and Emergency Services. First is the capability that exists within the Reserves with regard to Engineer Firefighting Detachments stationed throughout CONUS with pre-positioned equipment. The second is the substantial capability within the established DOD Fire Departments that protect federal installations amongst their respective services. Federal Fire Fighters provide an untapped reserve dispersed among 355 fire departments with approximately 15,708 civilian and military firefighters.<sup>92</sup> This professional force is cross-trained and capable of conduct structural firefighting, technical rescue, CBRNE and Hazardous Materials response, and airport crash fire rescue.

To utilize DoD firefighters requires an increase in current staffing levels from the current system while still maintaining protection on federal facilities and lands. Most federal fire departments work on a two tour model with firefighters averaging a 72 hour week. The work week increases with firefighters often working significant overtime resulting from training, sick days, vacation, or injury.<sup>93</sup> This is in stark contrast to most municipal departments that work anywhere from a 40 to 56 hour a week tours, based on a three or four shift model.<sup>94</sup> A proposal to increase staffing by a third to enable a tour cycle from two to three shifts, while maintaining

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<sup>91</sup> According to FEMA, there are 28 national task forces staffed and equipped to conduct round-the-clock search-and-rescue operations following earthquakes, tornadoes, floods, hurricanes, aircraft accidents, hazardous materials spills and catastrophic structure collapses. These task forces, complete with necessary tools and equipment, and required skills and techniques, can be deployed by FEMA for the rescue of victims of structural collapse.

<sup>92</sup> Department of Defense Office of the Inspector General. DoD Fire and Emergency Services Program (D-2003-121). August 12, 2003. 1

<sup>93</sup> Ibid, 9.

<sup>94</sup> Firehouse Magazine Annual Run Survey 2007. Firehouse.com. (accessed December 11, 2008).

current staffing levels in accordance with NFPA<sup>95</sup> and DoD policies and regulations establishes a deployable firefighting reserve to utilize in support of a national emergency.<sup>96</sup> Additionally it would provide an increase in capacity for call back during large-scale local emergencies that threaten facilities on federal installations.

In the event of a national emergency requiring a surge capability of firefighters to support local departments and JTF operations, DoD installation departments would revert to a two-shift cycle, with the third tour capable of deployment. The advantage is that these forces organized into trained crews with multiple skill sets and leadership experience at managing incidents. DoD fire departments routinely work with local fire departments outside of their gates through mutual aid agreements.<sup>97</sup> These departments already understand the complexity of interoperability and the challenges of the Incident Command System. Factors determining the call up and deployment would depend on requests from state governors, the location, and scale of the incident. The intent for this force is not a pick up team for the annual California Wildfire season, but a true reserve for incidents of National significance with planning priority for commitment to the National Capitol Region. Upon notification, DoD Departments from around CONUS would deploy force packages to ISBs<sup>98</sup> and would be subsequently organized into Task Forces and Strike Teams. There are four potential deployment models. First, firefighting force packages could self -deploy with organic equipment from home station to an ISBs depending on the location of the incident.

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<sup>95</sup> National Fire Protection Agency. The mission of the international nonprofit NFPA, established in 1896, is to reduce the worldwide burden of fire and other hazards on the quality of life by providing and advocating consensus codes and standards, research, training, and education.

<sup>96</sup> It is DoD Policy that “when called upon and approved by appropriate authority, make DoD Fire and Emergency Service capabilities available to assist civil authorities under mutual aid agreements, host nation support agreements, and Defense Support of Civil Authorities (DSCA).DoD Fire and Emergency Services (F&ES) Program, Number 6055.06, December 21, 2006. <http://www.dtic.mil/whs/directives/corres/pdf/605506p.pdf> (accessed April 20, 2009).

<sup>97</sup> Department of Defense Office of the Inspector General. DoD Fire and Emergency Services Program (D-2003-121). August 12, 2003, 2.

<sup>98</sup> Intermediate Staging Base JP 1-02- “A tailorable, temporary location used for staging forces, sustainment and/or extraction into and out of an operational area.”

Second, firefighting force packages could deploy with personal protective equipment (PPE) falling in on already built and strategically located pre-positioned reserve packages on select DoD installations. Third, firefighting force packages could deploy by strategic airlift from an APOE with all required organic equipment to the nearest APOD, with follow on movement to the ISB. Fourth, firefighters could deploy directly to the incident with PPE, falling in on local equipment and augmenting depleted or exhausted first responder crews. While perhaps the fastest method, it hinges on the assumption that there is sufficient equipment still functioning to provide adequate fire protection that not damaged or destroyed in the disaster.

Few municipal fire departments other than the Fire Department of New York could operationally sustain themselves given losses in men and equipment following 9/11. Under the current Homeland Security framework, the Department of Agriculture is responsible for ESF4. Recognizing the shortfall in capability for urban fire ground operations, the USDA approached the FDNY to establish two Incident Management Teams for use in the event of a disaster. These teams deployed to New Orleans after Katrina, providing relief to New Orleans firefighters.<sup>99</sup> Regardless of mutual aid agreements or EMAC, the capacity does not exist at this time at any level of local, state, or federal government to replace the fire department of a major US city if a disaster incapacitates its trained personnel and equipment. However, well-equipped and staffed DoD federal and reserve firefighters represent an overlooked surge capacity to augment a functional municipal fire departments.

## CONCLUSION

Institutional challenges prevent the rapid designation, preparation, and employment of military forces to support civil authorities when a national disaster occurs. These challenges are

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<sup>99</sup> USDA Forest Service. *A Fire and Aviation Success Story*, March 2006. <http://na.fs.fed.us/ss/05/fire/training.pdf> (accessed December 10, 2008).

the consequence of both statutory provisions that restrict the development of an adequate command structure and operating requirements that prevent preparation for incident response from receiving adequate attention. The evidence demonstrates that the statutory documents that authorize a DoD response require interpretation and collaboration during disasters and are not simple enough for rapid execution. Though these statutory authorities may appear to some as obstacles, they remain restraints and challenges for DoD when executing DSCA missions. The short term solution is to continue working through the interagency and with states to prepare for disaster.

While DoD has struggled with its roles and responsibilities within the National Response Framework, DSCA must be a core mission entitled and adequately funded by Congress. DoD must integrate planning across all levels of government recognizing its supporting role. NORTHCOM in conjunction with DHS, NGB, and State TAGs must develop a total force response in the event of National emergency. Waiting to enact change until the next catastrophic regional disaster or terror attack beyond the scope of 9/11 to enact change is not an option. The challenge for DoD is to maintain force generation requirements for the ongoing wars in Iraq and Afghanistan while sourcing and building forces for a domestic response.

The responsibility of the DoD to support civil authorities under the National Response Framework requires forces sourced and available for rapid deployment in order save lives, protect property, and mitigate the suffering. DoD currently plans for a total force response to national incidents, leveraging the substantial capability and knowledge provided by the National Guard. However, with Guard resources focused on wartime deployments DoD fails to equip those forces needed to respond in time of disaster. DSCA should not evolve into the sole responsibility of the National Guard, but remain a total force commitment. Additionally, the friction created by political considerations for the employment of the Guard may create a parallel command structure in a disaster. The dual command relationship may or may not affect future disaster relief as the PFO is responsible for achieving unity of effort. The framework for disaster response remains

untested since Katrina. DoD must identify specific capabilities required and sourced to support the Emergency Support Functions. That commitment requires a change in readiness evaluation standards incorporating DSCA metrics. The significance of future DSCA response lies in the readiness of DoD to successfully respond to catastrophic disasters.

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## Appendix 1. Emergency Support Functions Matrix

<p><b>ESF #1 – Transportation</b>  <b>ESF Coordinator: Department of Transportation</b></p>
<p>Aviation/airspace management and control  Transportation safety  Restoration and recovery of transportation infrastructure  Movement restrictions  Damage and impact assessment</p>
<p><b>ESF #2 – Communications</b>  <b>ESF Coordinator: DHS (National Communications System)</b></p>
<p>Coordination with telecommunications and information technology industries  Restoration and repair of telecommunications infrastructure  Protection, restoration, and sustainment of national cyber and information technology resources  Oversight of communications within the Federal incident management and response structures</p>
<p><b>ESF #3 – Public Works and Engineering</b>  <b>ESF Coordinator: Department of Defense (U.S. Army Corps of Engineers)</b></p>
<p>Infrastructure protection and emergency repair  Infrastructure restoration  Engineering services and construction management  Emergency contracting support for life-saving and life-sustaining services</p>
<p><b>ESF #4 – Firefighting</b>  <b>ESF Coordinator: Department of Agriculture (U.S. Forest Service)</b></p>
<p>Coordination of Federal firefighting activities  Support to wildland, rural, and urban firefighting operations</p>
<p><b>ESF #5 – Emergency Management</b>  <b>ESF Coordinator: DHS (FEMA)</b></p>
<p>Coordination of incident management and response efforts  Issuance of mission assignments  Resource and human capital  Incident action planning  Financial management</p>
<p><b>ESF #6 – Mass Care, Emergency Assistance, Housing, and Human Services</b>  <b>ESF Coordinator: DHS (FEMA)</b></p>
<p>Mass care  Emergency assistance  Disaster housing  Human services</p>
<p><b>ESF #7 – Logistics Management and Resource Support</b>  <b>ESF Coordinator: General Services Administration and DHS (FEMA)</b></p>

Comprehensive, national incident logistics planning, management, and sustainment capability  
Resource support (facility space, office equipment and supplies, contracting services, etc.)

**ESF #8 – Public Health and Medical Services**  
**ESF Coordinator: Department of Health and Human Services**

Public health  
Medical  
Mental health services  
Mass fatality management

**ESF #9 – Search and Rescue**  
**ESF Coordinator: DHS (FEMA)**

Life-saving assistance  
Search and rescue operations

**ESF #10 – Oil and Hazardous Materials Response**  
**ESF Coordinator: Environmental Protection Agency**

Oil and hazardous materials (chemical, biological, radiological, etc.) response  
Environmental short- and long-term cleanup

**ESF #11 – Agriculture and Natural Resources**  
**ESF Coordinator: Department of Agriculture**

Nutrition assistance  
Animal and plant disease and pest response  
Food safety and security  
Natural and cultural resources and historic properties protection  
Safety and well-being of household pets

**ESF #12 – Energy**  
**ESF Coordinator: Department of Energy**

Energy infrastructure assessment, repair, and restoration  
Energy industry utilities coordination  
Energy forecast

**ESF #13 – Public Safety and Security**  
**ESF Coordinator: Department of Justice**

Facility and resource security  
Security planning and technical resource assistance  
Public safety and security support  
Support to access, traffic, and crowd control

**ESF #14 – Long-Term Community Recovery**  
**ESF Coordinator: DHS (FEMA)**

Social and economic community impact assessment  
Long-term community recovery assistance to States, tribes, local governments, and the private sector  
Analysis and review of mitigation program implementation

**ESF #15 – External Affairs**  
**ESF Coordinator: DHS**

Emergency public information and protective action guidance  
Media and community relations  
Congressional and international affairs  
Tribal and insular affairs