

**DEFENSE SUPPORT OF CIVIL AUTHORITIES: A
VITAL RESOURCE IN THE NATION'S HOMELAND
SECURITY MISSIONS**

HEARING

BEFORE THE

**SUBCOMMITTEE ON
EMERGENCY PREPAREDNESS,
RESPONSE, AND COMMUNICATIONS**

OF THE

**COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES**

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**DEFENSE SUPPORT OF CIVIL AUTHORITIES:
A VITAL RESOURCE IN THE NATION'S
HOMELAND SECURITY MISSIONS**

Wednesday, June 10, 2015

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON EMERGENCY PREPAREDNESS,
RESPONSE, AND COMMUNICATIONS,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC.

The subcommittee met, pursuant to call, at 10:11 a.m., in Room 311, Cannon House Office Building, Hon. Martha McSally [Chairman of the subcommittee] presiding.

Present: Representatives McSally, Loudermilk, Donovan, Watson Coleman, and Rice.

Also present: Representative Langevin.

Ms. MCSALLY. The Committee on Homeland Security, Subcommittee on Emergency Preparedness, Response, and Communications will come to order. The subcommittee is meeting today to examine the important role played by the military in homeland security missions.

Before we begin, I would like to welcome the gentleman from New York, Mr. Donovan, to the subcommittee. We look forward to working with you on this committee.

Mr. DONOVAN. Thank you.

Ms. MCSALLY. I will now recognize myself for an opening statement.

Like politics, all disasters are local. Whether it is a hurricane making landfall in a coastal State, a bomb exploding in a mass gathering, or a wildfire threatening life and property, State and local first responders and emergency managers will be the first on scene to manage the response.

Sometimes, however, the magnitude of these emergencies will exceed the capabilities of the local responders. Governors may activate their National Guard forces, in addition to requesting Federal Government support. Coordinated by the Federal Emergency Management Agency, this assistance may also include assets from the Department of Defense.

Today's hearing will examine the vital role played by the military in these homeland defense missions. So far this year we have seen record snowfalls, destructive tornados, massive flooding around the country. Last week marked the start of the 2015 hurricane season, and in areas out West, including my home State of Arizona, we are

gearing up for what is predicted to be an above-average wildfire season as well.

In such emergencies, defense personnel and assets act as flexible force multipliers to the response. When activated by a Governor, a State's National Guard can provide, on short notice, search and rescue, logistics, firefighting, and law enforcement support. Federal military forces may also supplement State capabilities.

We have seen this in action. National Guard forces responded to the massive flooding in Texas and Oklahoma by rescuing stranded citizens, transporting supplies, and providing equipment that assisted in accessing areas isolated by the floodwaters. Arizona National Guard personnel and resources have contained and suppressed wildfires, protecting the life and property of Arizona citizens. National Guard and Federal military forces deployed in response to Hurricane Sandy, which tested the use of the dual-status command structure. I am interested to hear more from our witnesses about the coordination and integration of defense capabilities during these and other responses.

The National Guard also executes an important law enforcement support function. More than 400 Massachusetts National Guardsmen were on site during the 2013 Boston Marathon to supplement local law enforcement. These personnel were quickly able to pivot their mission to assist victims and secure the crime scene after the bombs detonated.

As the threats to our Nation have evolved, so too have the military's homeland defense capabilities. DOD and the National Guard have units dedicated to responding to incidents involving chemical, biological, radiological, or nuclear—CBRN—agents or explosives.

This subcommittee has held two hearings so far this year on the threat of chemical and biological terrorism. We know that the terrorists have long had an interest in using CBRN agents in their attacks. The resources and expertise provided by these specialized military teams are essential capabilities to meet this threat.

We have two distinguished panels of witnesses before us today to discuss the importance of defense support to State and local emergency response providers and the lessons that have been identified in previous response collaborations. I mentioned lessons have been identified. We were just talking earlier, often in the military we call them lessons learned, but they are not learned until they have actually been learned. So I call them lessons identified until they are actually lessons learned.

I look forward to learning more about the coordination of local, State, Federal, and military response capabilities, along with the areas that could be improved to make this vital response capability even more nimble.

[The statement of Ms. McSally follows:]

STATEMENT OF CHAIRMAN MARTHA MCSALLY

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Ms. MCSALLY. The Chairman now recognizes the gentlelady, Mrs. Watson Coleman, for an opening statement.

Mrs. WATSON COLEMAN. Thank you, Madam Chair.

Good morning. I would like to thank Chairman McSally for holding this important hearing on the role of defense resources in disaster response.

The capabilities of our defense resources are vast and diverse. Though ordinarily jurisdictions may not look to partnering with National Guard or the Defense Department, the boots on the ground and the capacity that they can supply are a great multiplier. Just last month, units from the Texas and Oklahoma National Guards provided surge capacity to State and local responders during and after massive floods pummeled the region. With the upcoming 10-year anniversary of Hurricane Katrina and 3-year anniversary of Superstorm Sandy, we are reminded once again of the important role that defense resources play in response to recovery.

Although many important reforms to facilitate improved integration of defense assets into civil response plans were implemented between Hurricane Katrina and Superstorm Sandy, every after-action report identified improvements that must be made. From clarifying the role of the dual-status commander, to improving training

to ensure that command-and-control structures are well-exercised, there is more work to be done to drive efforts for better coordination on the ground, particularly during complex multi-State catastrophes.

The testimony prepared by Mr. Kirschbaum underscores my point. Madam Chair, today's hearing could not come at a more appropriate time. As a subcommittee we have expended significant time when exploring response challenges associated with chemical and biological threats. In the event of a catastrophic chemical or biological incident, we know that defense resources are an integral part of an effective response. Today's hearing affords the subcommittee the opportunity to deepen our understanding of how defense resources support our Nation's chem-bio response capabilities.

Another area of great interest to Members on both sides of the aisle is the Nation's response capability when it comes to another emerging threat area, and that is cybersecurity. The disclosure last week by the Department of Homeland Security and the Office of Personnel Management that the personnel files for possibly 4 million current and former Federal employees were hacked brings threat into real focus.

The challenge of securing our Nation's cyber infrastructure and networks demands an all-hands approach. DHS has a dual cyber role. It is responsible for helping to protect Federal networks and partnering with critical infrastructure owners and others in the private sector to bolster cybersecurity. In the event of a major cyber incident which results in cascading failures of multiple independent, critical, life-sustaining infrastructure sectors, an effective and timely civilian response will necessarily depend on coordination with defense resources.

Recent announcements by the National Guard Bureau of the creation of cyber protection teams is a welcome development and reflects an awareness of the likelihood that civilian authorities will look to the Guard for such support. These cyber protection teams will train and operate on a traditional part-time basis in support of their respective State National Guards. But when activated for Federal Active Duty, the teams will provide surge support to Army Cyber Command and support defense cyber space operations. I will be interested in learning more about how this capability will coordinate with and complement the civilian response capability.

Along these lines, I would like to thank Mr. Gaynor, the director of Rhode Island Emergency Management, for being here today to talk to us about how the State leverages defense assets in its cyber response plans.

Although I am encouraged to learn that cyber response coordination is underway, I was concerned to learn in GAO's written testimony that the Department of Defense has not yet adequately aligned its guidance on preparing for and responding to domestic cyber incidents with National-level guidance. I hope we can learn more about DOD's progress in that regard today.

Once again, I thank the Chair for holding this timely hearing. I thank the witnesses for being here today, and I look forward to their testimony. With that I yield back my time.

Ms. MCSALLY. Thank you. The gentlelady yields back.

Mrs. WATSON COLEMAN. Madam Chair, I ask unanimous consent that Mr. Langevin be permitted to participate in today's subcommittee meeting.

Ms. MCSALLY. Okay. Without objection.

Mrs. WATSON COLEMAN. Thank you.

Ms. MCSALLY. Other Members of the subcommittee are reminded that opening statements may be submitted for the record.

[The statement of Ranking Member Thompson follows:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

JUNE 10, 2015

Good morning. I would like to thank Ms. McSally and Mr. Payne, Jr. for holding this important hearing.

Nearly 10 years ago, Hurricane Katrina slammed into the Gulf Coast and devastated the communities in its path.

During the response and recovery efforts, we learned painful lessons about planning and training gaps that undermined successful response efforts.

One of the most important lessons that emerged after Hurricane Katrina was the failure to coordinate Federal, State, and local assets to allow for rapid deployment of much-needed resources.

In Mississippi, for example, household goods supplied by the Federal Government never made it into the hands of disaster survivors, and were given instead to State agencies.

In the storm's aftermath, I worked with my colleagues in Congress to enact the Post-Katrina Emergency Management Reform Act, which provided a mechanism for the FEMA administrator to be elevated to the President's Cabinet during a disaster and directed FEMA to develop pre-scripted mission assignments for Federal agencies, including the Department of Defense.

Although Hurricane Katrina triggered many reforms to improve the ability to leverage defense support of civil authorities during emergencies, it is important to note that Hurricane Katrina was not the first time that defense resources were not effectively leveraged during a disaster response.

Following the September 11 attacks, Federal Reservists tried to respond to Ground Zero, but there was no legal authority to put them to work—so an on-the-fly approach was employed.

In the weeks and months that followed, Congress and the Executive branch began to reassess the Department of Defense's role in domestic responses to terrorist attacks and major disasters.

While some progress was made to bolster DOD's role in certain civil response activities, Hurricane Katrina demonstrated that critical gaps remained.

For example, our National Response Plan did not distinguish the type of defense support that might be required during a small disaster versus a catastrophic disaster.

The Plan did not include detail about how defense support would be provided, whether resources would be supplied by Federal forces or the National Guard, nor how long it would take to deliver defense assets.

Most notably, we did not conduct training exercises for catastrophic disasters in which DOD assets were fully deployed.

Accordingly, Military, Federal, State, and local responders were determining what defense assets could be supplied and who would supply them while response efforts were underway.

For example, in Mississippi, Governor Barbour initially called up about 1,000 National Guard troops, and put an additional 600 on stand-by—which was consistent with the State's response to Hurricane Camille but did not account for the population increase.

The military deserves credit for its response to Hurricane Katrina—50,000 National Guard Troops and 20,000 Federal troops were ultimately deployed, which undoubtedly saved lives.

That said, the response would have been more effective had appropriate plans been in place before the Hurricane.

Nearly 3 years ago, Hurricane Sandy pummeled the northeast, and it was the first time many of the post-Katrina reforms were utilized.

Although efforts to bolster and clarify the role of the dual-status commander after Hurricane Katrina did appear to improve coordination between National Guard

troops and Federal forces during Hurricane Sandy relief efforts, many involved in the response did not fully understand the chain-of-command.

Additionally, Hurricane Sandy revealed challenges presented by multi-State disasters, in which more than one dual-status commander is appointed but no coordinating process exists.

I will be interested in learning what training is underway to help those in the chain-of-command better understand the role of the dual-status commander and how DOD and FEMA are working together to improve response capabilities for multi-State disasters.

I will also be interested in learning how FEMA is working with DOD to identify capability needs and develop pre-scripted mission assignments at the regional level to ensure that defense assets can be deployed in a timely manner.

Finally, I will be interested to understanding how defense resources have supported the response to the horrific flooding in Texas and Oklahoma.

I look forward to the witness' testimony, and I yield back the balance of my time.

Ms. MCSALLY. We are pleased to have two panels of very distinguished witnesses before us today on this important topic. I will now introduce our first panel.

Mr. Robert Fenton currently serves as the deputy associate administrator of the Federal Emergency Management Agency's Office of Response and Recovery. He previously served as the assistant administrator for response and was responsible for coordinating the Federal response in support of States during major disasters.

Since joining FEMA in 1996, Mr. Fenton has held a number of positions at both headquarters and in Region IX. I understand Mr. Fenton will be soon departing headquarters to assume the role of regional administrator for Region IX. My home State is in Region IX, and I look forward to working with you in this capacity.

Mr. Robert Salesses serves as the deputy assistant secretary of defense for homeland defense integration and defense support of civil authorities. Okay, these are long titles here. Mr. Salesses previously served as the deputy special assistant for the Homeland Security Task Force, a position he assumed shortly after the September 11 terrorist attacks. Mr. Salesses is a retired United States Marine Corps officer.

Brigadier General Joseph Whitlock is the deputy director for political-military affairs, western hemisphere, strategic plans and policy directorate, at the Joint Chiefs of Staff. In this capacity his portfolio includes issues associated with homeland defense and defense support to civil authorities.

Mr. Joseph Kirschbaum is the director in the defense capabilities and management team of the Government Accountability Office, the GAO. In this capacity he oversees evaluation of the Department of Defense programs in the homeland defense and emerging threats and capabilities portfolio. In 2013, Mr. Kirschbaum served as acting director in GAO's Homeland Security and Justice Team, overseeing evaluations of Federal emergency preparedness and homeland security programs.

The witnesses' full written statements will appear in the record. The Chair now recognizes Mr. Fenton for 5 minutes.

STATEMENT OF ROBERT J. FENTON, JR., DEPUTY ASSOCIATE ADMINISTRATOR, OFFICE OF RESPONSE AND RECOVERY, FEDERAL EMERGENCY MANAGEMENT AGENCY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. FENTON. Chairman McSally, Ranking Member Payne, and Members of this distinguished subcommittee, I am Robert Fenton,

deputy associate administrator of the Office of Response and Recovery for FEMA. It is my pleasure to be here today to discuss how the Department of Defense and FEMA coordinate to ensure efficient, effective, and well-orchestrated response and recovery activities in support of States and local governments in response to all hazards.

In my testimony I will highlight four areas today. First, integration, personnel, and collaboration. A clear example of the collaboration is with regard to the exchange of subject-matter expertise between FEMA and the Department of Defense. We have liaison officers in FEMA from OSD Policy, Joint Staff, and NORTHCOM, and in each of our 10 regions we have defense coordinating officers assigned there. FEMA has embedded also FEMA officials who serve in NORTHCOM as the Deputy Plans and Integration for the J-5.

The defense coordinating officer is a key position who are members in disasters of the Unified Coordination Group to ensure unity of effort in helping provide support to State and local governments. They participate in developing Federal-State plans and maintain well-established relationships with DOD installations of the National Guard through the region.

Additionally, DOD has provided individuals to support our National IMATs. Then lastly, the employment of the dual-status commander during large-scale incidents improves unity of effort by establishing standardized procedures for the command and integration of State and Federal military forces for the contingency operations of no-notice operations.

The second area is catastrophic preparedness and planning. Since the implementation of Presidential Policy Directive 8, FEMA has facilitated the development of the National Planning System and a National response Federal interagency operational plan for all 10 regions, as well as specific annexes for unique catastrophic hazards based on National and regional threat assessments. DOD engages as a member of the core planning team for every National and regional planning initiative.

Additionally, NORTHCOM is in the process of developing incident-specific playbooks to execute defense roles and fulfill supporting capability requirements identified in the FEMA regional plans. NORTHCOM playbooks have already been developed based on FEMA plans for a southern California earthquake, Cascadia Subduction Zone earthquake, Alaska earthquake. Playbooks are in the process of being developed for the nuclear effort, improvised nuclear device events, in the Atlantic hurricane and New Madrid Seismic Zone events.

Lastly, the National Guard is key as they assist in planning at the State and multi-State level and also help connect whole community integration, civilian and military emergency management concepts.

The third area I would like to talk about is the progress we have made in mission assignments. Following the Post-Katrina Reform Act, FEMA was directed to develop prescribed mission assignments for all Federal departments and agencies. With regard to Department of Defense, we developed 28 prescribed mission assignments for DOD, specifically, 48 for the U.S. Army Corps of En-

gineers, and 6 for the National Geospatial Intelligence Agency. These allow us to further expedite the response.

In addition, FEMA has recently placed the whole prescribed mission assignment library in our Crisis Management System, WebEOC, which allows Federal agencies, State, local, Tribal agencies to access those mission assignments during events.

We further tested a new concept by bundling those mission assignments in response to a catastrophic event. What we were able to do is, previously it would take us about an hour to process a mission assignment, by bundling together in nine big bundles based on the plans developed for southern California, we were able to process about 70 prescribed mission assignments in 2 hours, which allows us to expedite the process for providing resources to State and local governments for life-saving measures.

The fourth area I would like to talk about is exercise activities and testing capabilities. The National Exercise Program is the principal exercise mechanism for National preparedness and measuring readiness. FEMA and DOD have collaborated and participated in various activities, most recently a southern California exercise in 2015. FEMA and DOD have begun to synchronize these exercise schedules and aligning those with FEMA and NORTHCOM operational planning. FEMA and DOD also are joint participants in the National Exercise Capstone Program that allows us to better test our capabilities.

In conclusion, as I present my testimony today we are collaborating, integrating, and sharing resources and capabilities with DOD via embedded liaisons, comprehensive planning, flexible mission assignment procedures, and overarching exercise activities. Ultimately, FEMA and DOD continue to take all necessary actions to maximize the utility and effectiveness of DSCA.

Thank you for the opportunity to testify today. I look forward to and am prepared to respond to any questions you have.

[The prepared statement of Mr. Fenton follows:]

PREPARED STATEMENT OF ROBERT J. FENTON, JR.

JUNE 10, 2015

INTRODUCTION

Chairman McSally, Ranking Member Payne, and Members of this distinguished subcommittee, I am Robert J. Fenton, deputy associate administrator for the Office of Response and Recovery of the Department of Homeland Security's (DHS) Federal Emergency Management Agency (FEMA). I am grateful for the opportunity to be here today.

In this testimony, I will discuss how the Department of Defense (DOD) supports FEMA under Defense Support of Civil Authorities (DSCA). FEMA and DOD work closely together to ensure that our efforts are well-orchestrated and that DOD capabilities are available to support States and Tribes as they respond to and recover from disasters. DOD is always in support of a lead Federal agency in providing DSCA.

COLLABORATION BETWEEN FEMA AND THE DEPARTMENT OF DEFENSE

Past incidents highlighted specific limitations under Federal law and Federal response doctrine that resulted in the slow application of resources during initial phases of disaster response. Over the last decade, FEMA has made significant strides to mitigate these limitations and enhance operational preparedness for future catastrophic events. DOD policies, processes, and procedures have evolved to incorporate these changes.

By leveraging the authorities of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) and the mandates set forth in Presidential Policy Directive (PPD) 8 on National Preparedness, FEMA improved planning and coordination among State, local, Tribal, and Federal stakeholders to include the DOD. Moreover, both FEMA and DOD have been heavily involved in the exchange of subject-matter expertise through the use of liaison officers (LNOs) and through DOD's Defense Coordinating Officer (DCO) program that maintains a presence in each of the ten FEMA regions.

In order to compress DOD response time lines and expedite the mission assignment request and approval process, FEMA and DOD developed 28 Pre-Scripted Mission Assignments (PSMAs) that remain working drafts based on lessons learned from previous disasters. Although not pre-approved, PSMAs facilitate a more rapid response by standardizing the process of developing Mission Assignments. They specify what type of assistance is required (personnel and equipment), identify a statement of work, and provide projected costs.

Through PKEMRA, these mission assignments can be authorized in advance of known events such as hurricanes.

FEMA MISSION ASSIGNMENT AUTHORITIES

Stafford Act

The Stafford Act constitutes the statutory authority for most Federal disaster response activities, especially as they pertain to FEMA programs in support of State and Tribal governments. It vests responsibility for emergency preparedness jointly in the Federal Government, State, Tribal, and territorial governments and their political subdivisions. It also gives FEMA responsibility for coordinating Federal Government response to support State, local, Tribal, and territorial efforts.

Post-Katrina Emergency Management Reform Act of 2006

PKEMRA gives FEMA the authority needed to lean forward and leverage the entire emergency management team in response and recovery efforts. This team includes not only Government, but also private, non-profit, and citizen partners to successfully prevent, protect against, respond to, recover from, and mitigate all hazards.

PKEMRA also requires that each Federal agency with responsibilities under the National Response Framework (NRF) develop operational plans to ensure a coordinated Federal response.

Presidential Policy Directive 8: National Preparedness

After the policy changes ushered in following PKEMRA, PPD-8 was released with the goal of strengthening the security and resilience of the United States through systematic preparation for the threats that pose the greatest risk to the security of the Nation.

PPD-8 defines five mission areas, including: Prevention, protection, mitigation, response, and recovery. It mandates the development of policy and planning documents to guide the Nation's approach for ensuring and enhancing National preparedness.

National Preparedness Goal

While PPD-8 describes the Nation's approach to preparing for threats and hazards that pose the greatest risk to the security of the United States, the National Preparedness Goal defines success by increased security and resilience through the use of core capabilities.

The National Planning Frameworks, which are part of the National Preparedness System, set the strategy and doctrine for building, sustaining, and delivering the core capabilities identified in the National Preparedness Goal.

National Response Framework

The NRF is a guide to how the Nation responds to all types of disasters and emergencies. It is built on scalable, flexible, and adaptable concepts identified in the National Incident Management System (NIMS) to align key roles and responsibilities across the Nation.

This Framework describes specific authorities and best practices for managing incidents that range from the serious, but purely local to large-scale terrorist attacks or catastrophic natural disasters. The NRF describes the principles, roles and responsibilities, and coordinating structures for delivering the core capabilities required to respond to an incident and further describes how response efforts integrate with those of the other mission areas.

The objectives of the response mission area define the capabilities necessary to save lives, protect property and the environment, meet basic human needs, stabilize the incident, restore basic services and community functionality, and establish a safe and secure environment moving toward recovery.

Under the NRF, Emergency Support Function (ESF) Annexes describe the Federal coordinating structures that group resources and capabilities into functional areas that are most frequently needed in a National response. The Federal Government organizes response resources and capabilities under the ESF construct. ESFs have proven to be an effective way to manage resources to deliver core capabilities. The Federal ESFs bring together the capabilities of Federal departments and agencies and other National-level assets. ESFs are not based on the capabilities of a single department or agency, and the functions for which they are responsible cannot be accomplished by any single department or agency. Instead, Federal ESFs are groups of organizations that work together to deliver core capabilities and support an effective response.

DOD, through the U.S. Army Corps of Engineers (USACE) is a lead and coordinating agency for ESF No. 3—Public Works and Engineering and is a support agency for every ESF. The ESFs are vital structures for responding to Stafford Act incidents; however, they may also be used for other incidents.

Response Federal Interagency Operational Plan

In addition to the National Planning Frameworks, FEMA completed the Federal Interagency Operational Plans (FIOPs) as part of the National Planning System. This includes one for each mission area to provide further detail regarding roles and responsibilities, specify the critical tasks, and identify resourcing and sourcing requirements for delivering core capabilities.

The Response FIOP builds upon the NRF, which sets the strategy and doctrine for how the whole community builds, sustains, and delivers the response core capabilities identified in the National Preparedness Goal.

This plan describes how the Federal Government delivers core capabilities for the response mission area. Specifically, the response FIOP is an all-hazards plan that describes how the Federal Government, pursuant to the Stafford Act, supports State, local, Tribal, territorial, and insular area efforts to save lives, protect property and the environment, and meet basic human needs following an emergency or disaster.

DEFENSE SUPPORT OF CIVIL AUTHORITIES

Like any lead or supporting agency under the NRF/ESF construct, the DOD is mission assigned when their assets or capabilities would best meet FEMA requirements in support of State-requested assistance. This process pertains to DSCA as it is defined by DOD Directive 3025.18 as “Support provided by U.S. Federal military forces, DOD civilians, DOD contract personnel, DOD Component assets, and National Guard forces (when the Secretary of Defense, in coordination with the Governors of the affected States, elects and requests to use those forces in Title 32, U.S.C., status) in response to requests for assistance from civil authorities for domestic emergencies, law enforcement support, and other domestic activities, or from qualifying entities for special events. Also known as civil support.”

Process

The Defense Coordination Element (DCE) is an integral part of a region’s all-hazards preparedness and response. The DCE participates in the development of regional plans, familiarizes regional staff with DSCA capabilities and maintains well-established relationships with DOD installations and National Guard leadership throughout the region. These relationships are critical since they allow the region to rapidly identify potential facilities to serve as Federal Staging Areas or Incident Support Bases.

During disasters, the response process begins when the President issues either an Emergency Declaration or a Major Disaster Declaration under the Stafford Act. After a declaration, the DCO and the DCE are activated in response to a FEMA Mission Assignment (MA), which are used by FEMA to request assistance from the DOD, to task other Federal agencies, and to provide reimbursement for direct assistance during emergencies and disaster.

The DCO is a member of the Unified Coordination Group and works alongside the State/Tribal and Federal Coordinating Officer (FCO), State and regional partners, including ESFs, to identify capability gaps and either known or anticipated DOD requirements. FEMA Mission Assignments are generated by the FCO at the FEMA Joint Field Office. Those Mission Assignments requesting DOD assistance are validated by the DCO and then sent by the FCO through FEMA to the Secretary of

Defense. PSMA's for the most commonly-requested assistance from DOD are available to significantly reduce processing delays.

This process ensures that resources are coordinated and arrive at the disaster site as quickly and efficiently as possible.

HURRICANE SANDY SUCCESSES AND LESSON LEARNED

FEMA deployed significant numbers of personnel, both before and after Hurricane Sandy made landfall, to support response and recovery efforts. At the peak of response and initial recovery efforts, more than 17,000 Federal personnel—including more than 7,500 FEMA staff—were deployed. In addition, States deployed over 11,000 National Guard personnel in the impacted areas.

FEMA successfully used its mission assignment authority to provide coordinated, efficient response to survivors after the storm, issuing over \$6.3 million in mission assignments to Federal partners the day Hurricane Sandy made landfall, directing them to provide assets and services to support State, local, and Tribal efforts. Federal assets and services included communications system restoration, debris removal, aerial imaging and surveillance, as well as health and medical care.

Despite these successes, the significant response to Sandy also revealed notable challenges in how FEMA coordinates with its Federal partners, supports State, local, and Tribal officials and disaster survivors, integrates with the whole community, and prepares and deploys its workforce. FEMA's Sandy After-Action Report identified issuing timely mission assignments as an area for improvement.

Specific to DOD mission assignments, FEMA continues to work with DOD to develop PSMA's which enable FEMA to expedite resources to the affected communities during a disaster. These mission assignments were directed by law in PKEMRA and while they are not pre-approved, they instead provide a basis for language that is agreed to prior to an incident—promoting common understanding and reducing processing time.

FEMA currently has a total of 251 approved PSMA's for 31 departments and agencies. FEMA has a close partnership with the DOD as evidenced by the 28 PSMA's for DOD support, along with an additional 48 for the U.S. Army Corps of Engineers, and 6 for the National Geospatial Intelligence Agency. The PSMA catalogue will be continually updated based on experiences and lessons learned from disasters and simulation exercises.

FEMA recently revamped its PSMA review process and transferred the PSMA process to FEMA's WebEOC Crisis Management System to make tracking draft PSMA's, and accessing approved PSMA's, more visible to departments and agencies and to streamline their coordination within FEMA. A PSMA Technical Review Team was also created, made up of representatives from FEMA headquarters and the regions, to conduct a comprehensive review of each draft PSMA, ensuring eligibility, clarity, completeness, proper format, legality, and cost efficiency. In addition, FEMA developed a new comprehensive Mission Assignment Guide to help clarify the mission assignment process, effectively managing the time required for issuing, executing, and financially closing out mission assignments.

ENHANCED PARTNERSHIPS, INTEGRATED PLANNING, AND EXERCISES

DOD and FEMA enjoy a very close relationship in deliberate planning and exercising for catastrophic incidents.

Doctrine, Guidance, and Plans Guide Integration at the State, Regional, and National Level

A new "All-Hazards" planning construct is in place to execute PPD-8 and ensure that all ten FEMA regions are synchronized and using a single all-hazards FIOP. FEMA also develops incident-specific annexes to plan for unique situations or requirements that would not otherwise be addressed in the all-hazard plan. A single 5-year planning schedule enables FEMA to synchronize its planning efforts with other departments and agencies, including DOD, to ensure planning addresses regional Threat and Hazard Identification and Risk Assessments (THIRAs), as well as the Strategic National Risk Assessment.

We are proud of substantial improvements in the integration of planning assumptions, concepts of operations, and support requirements with the DOD represented in intergovernmental planning for catastrophic incidents.

Through the leadership of the Office of the Assistant Secretary of Defense for Homeland Defense and Global Security, NORTHCOM, the Joint Staff, National Guard Bureau, and other organizations, the *NORTHCOM CONPLAN 3500, DSCA Response* plan has been developed, which represents NORTHCOM's plan for exe-

cuting its supporting roles and responsibilities set forth by the NRF and the FIOP-Response.

Similarly, NORTHCOM is beginning to develop incident-specific playbooks to execute DOD roles and responsibilities identified in Regional All-Hazard Plans and their incident-specific annexes. National Guard planning at the State and multi-State level help to close the loop on whole community integration of civilian and military emergency management concepts.

To illustrate our success in integration, new NORTHCOM Playbooks are under development now to specifically support the tasks and requirements set forth in the FEMA Region IX Southern California Earthquake Plan and the FEMA Region X Alaska and Cascadia Subduction Zone Annexes. The NORTHCOM Playbooks will function as annexes to the NORTHCOM CONPLAN 3500 (DSCA Response).

Embedded Partners

To maintain momentum with the planning integration, FEMA and NORTHCOM are in the process of embedding officials to serve in each other's Plans Divisions. A FEMA official was detailed to NORTHCOM last summer and currently serves as a deputy plans chief to support the development of NORTHCOM playbooks.

DOD also supplies a number of personnel within FEMA headquarters and its regional offices to coordinate and synchronize its operations. Liaison officers from Office of the Under Secretary of Defense for Policy, the Joint Staff, and NORTHCOM permanently reside within the FEMA Response Directorate to coordinate and ensure situational awareness on a broad array of program efforts. These liaisons also serve in positions in the National Response Coordination Center (NRCC) to coordinate operational support missions to the States and survivors during disasters. NORTHCOM also supplies permanent DCOs in each FEMA region and an operational planner within the FEMA Headquarters Response Directorate Planning Division. These personnel are engaged as part of the core planning team for each regional and National planning initiative. Routine coordination meetings, a NORTHCOM National Planning Integration Team, and other forums provide opportunities for our organizations to raise awareness of new and on-going planning initiatives, to solicit formal feedback on planning products and to synchronize our collective planning efforts.

Additionally, FEMA is looking to enhance the capabilities of its Incident Management Assistance Teams (IMATs) by including some of our key interagency partners as members of the IMATs. This will enable the IMATs to more quickly establish an effective unified response with our State and local partners. DOD has provided two full-time personnel to two of the National IMATs, (an Noncommissioned Officer and an Officer in the rank of Colonel). Their primary role will be as planners working closely to ensure that all DOD resources are properly integrated in the response and recovery efforts in support of the State objectives. When not engaged in a response, these individuals will also be engaged with FEMA's on-going deliberative planning efforts. This will further enhance our abilities to fully understand the full capabilities of DOD in support of response operations.

Exercising: National Exercise Program Capstone Event

FEMA doctrine reflects that the planning process is not complete until after it has been validated through an actual event or exercise. Exercises are also the means to test Federal department and agency policies, procedures, and capabilities. For instance, the National Exercise Program Capstone 14 exercise that was held March 27 through April 3 tested capabilities of the broad homeland security enterprise, as well as the specific capabilities of FEMA and DOD. Key DOD components participated in the event which served to validate and improve upon the recent joint planning efforts conducted by FEMA, the State of Alaska, DOD components, and other departments and agencies.

Senior Leader Engagement

FEMA engages senior leaders throughout the military community through:

- Quarterly senior leader video teleconferences, which include participation from the deputy commander of NORTHCOM and FEMA's associate administrator for the Office of Response and Recovery
- Quarterly dual-status commander courses
- Monthly ESF Leadership Group
- Periodic senior executive DSCA course, which features FEMA instruction
- Participation in Capstone, which is a DOD General Officer senior leader development course.

CONCLUSION

FEMA's mission is to support our citizens and first responders to ensure that as a Nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards. FEMA coordinates with other departments and agencies, such as the DOD, which enables FEMA to better serve the Nation. This supports FEMA's broad strategic goals as an agency, including its strategic priority of posturing and building capability for catastrophic disasters. DOD is a key partner for FEMA and through liaisons, senior leadership engagement, and planning efforts, this relationship is strengthening.

Thank you for the opportunity to discuss this important authority.

Ms. MCSALLY. Thank you, Mr. Fenton.

The Chair now recognizes Mr. Saleses for a 5-minute opening statement.

STATEMENT OF ROBERT G. SALESSES, DEPUTY ASSISTANT SECRETARY, HOMELAND DEFENSE INTEGRATION AND DEFENSE SUPPORT OF CIVIL AUTHORITIES, U.S. DEPARTMENT OF DEFENSE

Mr. SALESSES. Chairwoman McSally, Congresswoman Watson Coleman, distinguished Members of the subcommittee, thank you for the opportunity to address you today on the Department of Defense's defense support to civil authorities mission, affectionately known as DSCA.

I want to emphasize four key points today. DOD plays a supporting and important role in the National response system. DOD relies on a broad range of defense capabilities to provide that support. DOD has made significant improvements to our preparedness to support civil authorities. Last, DOD is better prepared to support civil authorities at this time than any other time in history.

A fundamental tenet of the National response system is that DOD is always in support of domestic civil authorities. DOD understands this and is well prepared to assist our Federal partners in sustaining and saving lives in the aftermath of man-made or natural disasters.

DOD supports FEMA as the primary Federal agency and is prepared to support each of the 14 emergency support functions, the ESFs. Working closely with our ESF partners, DOD has identified critical capabilities to assist them.

DOD has made significant investments in equipping and readiness of the National Guard. The National Guard is a critical State-level resource, providing needed capabilities to State Governors quickly in response to disasters and emergencies. In addition, through pooling of National Guard resources under emergency management assistance compacts, State Governors may draw upon additional National Guard capabilities from other States.

DOD supports disaster response with a broad range of defense capabilities, much more than just our military. DOD's approach to the DSCA mission starts at the installation level. DOD encourages installations to enter into mutual aid agreements providing reciprocal capabilities between the local community and the military installations. Under immediate response authority, installation commanders may make the resources under their control immediately available to save and sustain life in the local community.

When providing assistance, DOD leverages the total military force, Active, Reserve, and National Guard. DOD also relies on its

defense agencies, the U.S. Army Corps of Engineers, the Defense Logistics Agency, and the National Geospatial Agency. USTRANSCOM's strategic air, maritime, and intermodal lift capabilities enable DOD to provide responsive transportation capabilities to our Federal partners.

The third point, DOD has made significant improvements in its preparedness. DOD has a strong, direct, day-to-day relationship with the Department of Homeland Security, FEMA, and all of our ESF partners. That relationship is enabled from full-time DOD advisers at the DHS headquarters, DOD liaisons at the FEMA headquarters, and coordinating offices at each of the 10 FEMA regions.

DOD works closely with FEMA to integrate planning efforts at both the State, regional, and Federal levels. DOD and FEMA have developed many prescribed mission assignments and are continually improving upon those to expedite the request for assistance process. DOD's standing defense support to civil authorities, EXORD, identifies critical capabilities that are postured military forces to respond rapidly in support of our Federal partners.

DOD has also developed a wide range of chemical, biological, radiological, and nuclear—CBRN—response capabilities and has trained a force of 18,000 personnel postured to respond rapidly in support of civil authorities in the aftermath of a CBRN event.

DOD supports the FEMA-led National Exercise Program, and DOD also hosts numerous exercises at the Federal, State, and local partner level, most recently out in Colorado Springs, Ardent Sentry, which is a major West Coast earthquake scenario, working very closely with the State of California and Arizona. DOD has leveraged the dual-status commander concept to improve the unity of effort between State National Guard and military forces.

As a result of these advances and others, DOD is well prepared to maximize its capabilities and forces to act quickly to save and sustain lives in the aftermath of catastrophic disasters.

Thank you for the opportunity to appear. I appreciate your leadership, Chairwoman McSally and distinguished Members of the committee, and I appreciate your support of the Department of Defense. I look forward to your questions.

[The joint prepared statement of Mr. Salesses and General Whitlock follows:]

JOINT PREPARED STATEMENT OF ROBERT G. SALETTES AND JOSEPH E. WHITLOCK

JUNE 10, 2015

Chairwoman McSally, Ranking Member Payne, distinguished Members of the subcommittee: Thank you for the opportunity to address you today on the Department of Defense's (DOD's) role in responding to man-made and natural disasters in the United States.

We would like to emphasize four key points for you today: (1) DOD plays a supporting but important role in the National response system; (2) DOD relies on a broad range of defense capabilities to provide support; (3) DOD has made significant improvements in its preparedness to support civil authorities; and (4) DOD is now better prepared to support civil authorities than at any other time in our Nation's history.

DOD'S ROLE IN THE NATIONAL RESPONSE SYSTEM

DOD is prepared to assist civil authorities in saving and sustaining lives after man-made and natural disasters, including extreme weather events, pandemics, and

industrial accidents. DOD understands this and is well-prepared to meet this expectation.

As stated in the National Defense Strategy, while defending the homeland, the Department must also maintain the capacity to support civil authorities in times of National emergency such as in the wake of catastrophic man-made and natural disasters.¹ DOD refers to this support as “Defense Support of Civil Authorities” (or “DSCA”): Support provided by U.S. Federal military forces, DOD civilians, DOD contract personnel, and DOD component assets in response to requests for assistance from civil authorities for domestic emergencies, law enforcement support, and other domestic activities, or from qualifying entities for special events.

DOD plays a supporting but important role in the National response system. As provided in the National Response Framework, the National response system and its protocols provide tiered levels of support when additional resources or capabilities are needed. Most incidents begin and end locally and are managed at the local level. Some may require additional support from neighboring jurisdictions or State governments.

The Federal Government and many State governments organize their response resources and capabilities under the Emergency Support Function (ESF) construct. The 14 Federal ESFs bring together the capabilities of Federal departments and agencies and other National-level assets to perform such functions as transportation, public works and engineering, mass care and temporary housing, logistics, public health and medical services, and search and rescue. DOD is available to support all 14 Federal ESFs when requested.

A fundamental tenet of the National response system is that DOD is always in support of domestic civil authorities. It is also important to note that the chain of command always runs from the President to the Secretary of Defense to the combatant commander concerned. DOD fully supports the Incident Command System of the National Incident Management System. However, at no time does the supported agency exercise any formal command and control over DOD forces.

In this National response system, the National Guard serves as a critical State resource in disaster responses and can provide much-needed capabilities to State Governors very quickly. The majority of National Guard support in disaster responses is performed at the direction of a State Governor and in a State Active-Duty status as a State militia.

Normally, DOD provides DSCA in support of the Federal Emergency Management Agency (FEMA) or another lead Federal agency, when directed by the President or when the Secretary of Defense has approved a request for assistance pursuant to the Stafford Act² or the Economy Act.³ This arrangement helps DOD ensure that its resources are used—lawfully—to satisfy prioritized Federal Government requirements as outlined by the President and the lead Federal agency. This arrangement is absolutely critical when DOD is supporting a Federal multi-State response so that lead Federal agency requirements are appropriately prioritized and personnel and resources are deployed/employed in the affected region effectively.

There are, however, exceptions, including support provided under the immediate response authority or pursuant to a mutual and automatic aid agreement, as well as DOD organizations with independent authorities.

Immediate Response Authority.—Under immediate response authority, Federal military commanders, heads of DOD components, and responsible DOD civilian officials may, in response to a request for assistance from a civil authority, under imminently serious conditions and if time does not permit approval from higher authority, may provide an immediate response by temporarily employing the resources under their control, subject to any supplemental direction provided by higher headquarters, to save lives, prevent human suffering, or mitigate great property damage within the United States. Support provided under the immediate response authority should be provided on a reimbursable basis, where appropriate or legally required, but will not be delayed or denied based on the inability or unwillingness of the requester to make a commitment to reimburse DOD.

*Mutual and Automatic Aid.*⁴—Installation commanders may provide DSCA to local jurisdictions under mutual and automatic aid agreements (also known as reciprocal fire protection agreements), when requested. Support provided pursuant to a

¹Department of Defense, *National Defense Strategy*, June 2008, page 7.

²The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288), as amended.

³31 U.S.C. § 1535.

⁴Sections 300hh–ll and 5121 et. seq. and Chapter 15A of Title 42, U.S. Code.

mutual and automatic aid agreement is not reimbursed with funding, but instead is reimbursed in-kind by reciprocal support.

Organizations with Independent Authorities and Agreements.—Many DOD organizations possess independent authorities to provide DSCA. For example, the U.S. Army Corps of Engineers (USACE) has independent statutory authorities regarding emergency management, such as section 5 of the Flood Control Act of 1941 (Public Law 84–99) (e.g., providing technical assistance; direct assistance such as providing sandbags, pumps, and other types of flood fight materials, emergency contracting; and emergency water assistance due to contaminated water source). Under the National Response Framework, USACE is assigned as the primary agency for Emergency Support Function No. 3—Public Works and Engineering. USACE assists FEMA by coordinating Federal public works and engineering-related support, as well as providing technical assistance, engineering expertise, and construction management to prevent, prepare for, respond to, and/or recover from domestic incidents. Likewise, the National Geospatial—Intelligence Agency (NGA), in accordance 50 U.S.C. §3045, is authorized to provide geospatial intelligence support to other Federal departments and agencies, including FEMA.

Other DOD organizations have unique agreements for support. For instance, the Defense Logistics Agency (DLA) has an interagency agreement with FEMA to provide commodities including fuel to civil authorities responding to disasters.

DOD RELIES ON A BROAD RANGE OF DEFENSE CAPABILITIES TO PROVIDE DSCA (SUPPORT TO SUPERSTORM SANDY AS AN EXAMPLE)

DOD supports disaster response with a broad range of defense capabilities, including the Total Force (Active and Reserve Components, including the National Guard), DOD civilians, and the significant capabilities of the Defense Agencies.

During the response to Superstorm Sandy in 2012, for example, USACE unwatered the longest tunnel in North America—the Brooklyn-Battery tunnel—and did the same for other vital tunnel and subway lines, at a scale and on a pace never before seen in a disaster. USACE also installed 198 generators in critical locations (e.g., hospitals, shelters, and other facilities at the Hoboken Ferry Terminal, Long Island, and Indiantown Gap, as well as first responder operating locations) and sent power experts and generators to support New York Public Housing. At peak capacity, USACE generated 55 megawatts of power, enough to support the power needs of 50,000 families.

During the Superstorm Sandy response, DLA, under its interagency agreement with FEMA, provided 9.3 million gallons of fuel to over 300 gas stations and emergency vehicle fueling depots, and, together with USACE and the U.S. Transportation Command, provided essential support for restoring the electric grid, the gasoline distribution system, and other critical infrastructure. DLA also used 500 trucks to distribute 6.2 million meals, 92,000 Meals-Ready-to-Eat, 72,000 bottles of water, 172,500 blankets, 4,000 cots, 18,734 mats, 6 portable X-ray machines, 51 generators (with a 71,250-kilowatt capacity), and 107 unwatering pumps (providing a 1 million gallons per minute capacity).

Prior to Sandy’s landfall, NGA reviewed more than 21,000 square miles of satellite data to produce pre-strike hurricane products that included images of 24 coastal cities whose critical infrastructures and key resources would be susceptible to damage if a hurricane landed in their vicinity. NGA also deployed teams of analysts to support FEMA in Boston, New York City, and Philadelphia. After landfall, NGA worked closely with FEMA and the U.S. Coast Guard to provide mission-essential support by enabling access to and supplying analyzed images to improve situational awareness, including flooding and damage assessments, monitoring energy distribution centers, and evaluating airfields for possible evacuation and relief missions.

DOD HAS MADE SIGNIFICANT IMPROVEMENTS IN ITS PREPAREDNESS TO PROVIDE DSCA

DOD continually pursues improvements in its ability to provide DSCA when needed, and to work closely with its domestic agency partners.

Strategic Guidance.—DOD’s strategic guidance recognizes DSCA as a priority mission.⁵ One of the three pillars emphasized by the Defense Strategy is protecting the

⁵ The 2012 Defense Strategic Guidance designated DSCA as a primary DOD mission. The Unified Command Plan assigned DSCA as a core mission of two geographic combatant commands: U.S. Northern Command (responsible for DSCA in the 48 contiguous States, Alaska, the District of Columbia, and the territories of Puerto Rico and the U.S. Virgin Islands) and U.S. Pacific Command (responsible for DSCA in Hawaii and the territory of Guam). The Defense Planning

homeland—detering and defeating attacks and supporting civil authorities in mitigating the effects of potential attacks and natural disasters.

Integrated Regional Planning.—Consistent with the Presidential Policy Directive 8 (PPD-8) on National Preparedness, FEMA initiated a deliberate planning process to ensure integrated regional plans are in place for each FEMA region. The purpose of these plans is to speed disaster responses by enabling quick decisions based on pre-determined plans. DOD has worked closely with FEMA to integrate planning efforts and identify both response requirements and coordination challenges during major disasters.

Complex Catastrophe Initiative.—DOD has taken steps to improve its preparedness to help civilian authorities save and protect lives during a complex catastrophe. The Complex Catastrophe Initiative directed improvements in DSCA for regional planning and plans integration, force sourcing, training and exercises, and the role of military installations and Defense Agencies in emergency response operations.

Pre-Scripted Mission Assignments.—DOD continues to work closely with FEMA to develop all-hazard, pre-scripted mission assignments (PSMAs). FEMA PSMAs translate civilian support requirements into military tasks to expedite the request for assistance process. Although more are in development, there are 28 all-hazards, PSMAs for DOD support, more than 30 PSMAs for USACE support, and 6 PSMAs for NGA support. These all-hazards PSMAs include:

- Heavy and medium rotary-wing lift;
- Tactical transportation;
- Strategic transportation;
- Communications support;
- Emergency route clearance;
- Damage assessment;
- Mobilization centers and operational staging areas;
- Airspace control;
- Deployable temporary medical facilities; and
- Rotary-wing medical evacuation.

DSCA Execute Order.—DOD published a standing DSCA Execute Order (EXORD) that provided the commanders of U.S. Northern Command and U.S. Pacific Command—the two combatant commanders responsible for DSCA—more delegated authority to provide critical life-saving and life-sustaining capabilities faster, including:

- Defense Coordinating Officers and Defense Coordinating Elements;
- DOD installations that could have been used for FEMA mobilization centers;
- Medium- and heavy-lift helicopters;
- Search aircraft for disaster area reconnaissance;
- Robust, deployable communications support packages;
- Joint task forces to command and control Federal military forces;
- Combatant Commander Assessment Elements;
- Aeromedical patient evacuation/transportation;
- Forward Surgical Teams; and
- The DLA Deployment Distribution Center.

Access to the Total Force.—The Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve—more than 365,000 men and women living in thousands of communities across our Nation, who are ready on short notice to put on a uniform and serve when called—are an invaluable resource to our Nation.

For example, the Army Reserve provides a significant portion of the Army's disaster response capabilities, including mortuary affairs (75 percent), quartermaster (65 percent), medical (59 percent), transportation (44 percent), and engineer (31 percent) capabilities. In the National Defense Authorization Act for Fiscal Year 2012, Congress approved the administration's request to grant the Secretary of Defense the authority to order to active duty this invaluable resource to provide assistance in responses to major disasters and emergencies in the United States. To maximize the value of this authority to mitigate human suffering and save lives, DOD established policies to expedite the sourcing of these invaluable forces, including consideration of proximity to the region affected and time to employment.

Chemical, Biological, Radiological, and Nuclear (CBRN) Response Enterprise.—DOD has developed a wide range of CBRN response capabilities, and has trained to employ these capabilities rapidly in support to civil authorities to help save lives in the aftermath of a CBRN incident.

The CBRN Response Enterprise—almost 17,000 military personnel strong—currently consists of 57 National Guard Weapons of Mass Destruction Civil Support

Teams (one in each State and territory and two in California, Florida, and New York), 17 National Guard CBRN Enhanced Response Force Packages (stationed in Alabama, Colorado, Florida, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Minnesota, Nebraska, Nevada, Oregon, Puerto Rico, Virginia, West Virginia, and Wisconsin), 10 National Guard Homeland Response Forces (one stationed in each of the 10 FEMA regions), one Defense CBRN Response Force, and two Command-and-Control CBRN Response Elements.

The CBRN Response Enterprise provides such critical capabilities as detection and assessment of CBRN hazards; casualty search and extraction; casualty decontamination; emergency medical, patient triage, trauma care, and surgical and intensive medical care; fatality recovery; ground and rotary-wing air patient movement; security; command and control; engineering; logistics; transportation; and aviation lift.

DOD published a standing domestic CBRN Response EXORD that establishes a response posture system for the Federal components of the CBRN Response Enterprise, and provides the Commanders of U.S. Northern Command and U.S. Pacific Command with authorities to conduct Federal CBRN response operations in support of a lead Federal agency, such as FEMA.

Defense Coordination and Liaison.—In addition to interagency planning and other initiatives, DOD has forged strong, direct, day-to-day relations with the Department of Homeland Security (DHS) and FEMA, including full-time DOD advisers in DHS headquarters, Defense Coordinating Officers and Defense Coordinating Elements at each of the 10 FEMA regional headquarters, and DOD liaisons at FEMA's deployed joint field offices.

DOD also established a National Guard Joint Force Headquarters–State in all 54 States, territories, and the District of Columbia. These Joint Force Headquarters provide expertise and situational awareness to DOD authorities to facilitate integration of Federal and State-level activities. They also develop plans to support civil authorities in response to man-made or natural disasters, and coordinate these plans, through the National Guard Bureau and the Joint Staff, with U.S. Northern Command and U.S. Pacific Command.

Exercises.—Exercises are critical to ensuring readiness and identifying gaps and potential weaknesses within and across agencies in responding to man-made or natural disasters. DOD has fully supported the FEMA-led National Exercise Program. For years, DOD has also hosted numerous exercises involving Federal, State, and local partners, including annual DSCA exercises such as Ardent Sentry 2014 (Alaska earthquake) and Ardent Sentry 2015 (California earthquake). In April of this year, the Commander of U.S. Northern Command hosted a Senior Leader Seminar with Federal, State, and local partners. This seminar used a large-scale California earthquake with a cascading effects scenario as a framework to integrate key State, interagency, and DOD perspectives on how best U.S. Northern Command can provide support.

Dual-Status Commanders.—In 2010, DOD and the States agreed to utilize dual-status commanders in disaster responses. Until 2010, dual-status commanders had only been used in deliberately-planned special events.

A dual-status commander is a military commander who may, in accordance with the law, serve in two statuses, State and Federal, simultaneously, while performing the duties of those statuses separately and distinctly. In State status, the dual-status commander is subject to the orders of the State Governor and Adjutant General, and, on their behalf, exercises command or control of State National Guard forces to execute State missions. In Federal status, the dual-status commander is subject to the orders of the President, the Secretary of Defense, and the supported Combatant Commander, and, on their behalf, exercises command and control of Federal military forces for the purpose of executing DSCA missions. The appointment of a dual-status commander does not grant the President (or other Federal officials) command of non-Federalized State National Guard forces or a State Governor (or other State officials) command of Federal military forces.

The intended benefit of appointing a dual-status commander is to facilitate unity of effort within our National response system between State National Guard forces, operating on behalf of a State Governor, and Federal military forces, operating on behalf of the President, the Secretary of Defense, and the supported Combatant Commander in achieving common objectives in a disaster response or in securing a special event.

To expedite appointment of dual-status commanders, DOD has established standing memorandums of agreement with 52 of the 53 States and territories.

DOD IS BETTER-PREPARED TO PROVIDE DSCA

As a result of these advances, DOD is better-prepared to defend the United States and assist civil authorities in the aftermath of a catastrophic incident than at any other time in our Nation's history.

DOD is prepared, when directed by the President or the Secretary of Defense, to provide, as part of the Federal Government's support of State and local emergency assistance efforts, capabilities and resources to save lives, sustain lives, and protect property and public health and safety, including search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, and other essential needs, including movement of supplies or persons.⁶ DOD is well-prepared and has capabilities and forces postured to act, with a sense of urgency, when needed, to maximize the saving and sustaining of lives in the aftermath of a catastrophic disaster.

DOD maintains this high level of preparedness by continually investing in its preparedness, including through integrated planning, training, and exercises.

CONCLUSION

DOD plays a supporting, but important role in the National response system.

DOD relies upon a broad range of defense capabilities to provide support. DOD has made significant advances in its ability to provide DSCA, when needed, by: (1) Recognizing DSCA as a priority mission in DOD's strategic guidance; (2) working closely with FEMA to support the deliberate planning process to develop integrated regional plans for each FEMA region; (3) enhancing DSCA for regional planning and plans integration, force sourcing, training, and exercises, and the roles of installations and Defense Agencies through the Complex Catastrophe Initiative; (4) expediting the request for assistance process by establishing FEMA PSMAs; (5) empowering Combatant Commanders to provide DSCA via a standing DSCA EXORD; (6) incorporating the extensive capabilities and outstanding personnel of the Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve; (7) fielding the best-funded, best-equipped, and best-trained CBRN response force in the world; (8) forging strong, direct, day-to-day relations with DHS and other partners; and (9) promoting unity of effort through such concepts as the use of dual-status commanders.

As a result, DOD—Active, Reserve, National Guard, and civilians and contractors—is better prepared to defend the United States and assist civil authorities in the aftermath of a catastrophic incident than at any other time in our Nation's history. DOD's men and women—both military and civilian—are well-prepared to act, with a sense of urgency, when needed.

To continue to meet interagency preparedness requirements, DOD will work with its partners to: (1) Build and sustain partnerships; (2) establish well-developed networks for sharing information and setting joint priorities; (3) forge pre-arranged agreements; (4) continually improve on integrated planning; (5) train and exercise to execute integrated plans; and (6) rapidly integrate National efforts. As then-Deputy Secretary Carter stated in DOD's 2013 after-action report for Superstorm Sandy, "[t]his is a new frontier for the Department as counter-insurgency was . . . and we continue to learn and adapt."

Thank you for the opportunity to appear before you today. We appreciate your leadership, Chairwoman McSally, Ranking Member Payne, and distinguished Members of the subcommittee, and your support for the Department of Defense. We look forward to your questions.

Ms. MCSALLY. Thank you, Mr. Salesses. The Chair now recognizes Brigadier General Whitlock.

STATEMENT OF JOSEPH E. WHITLOCK, DEPUTY DIRECTOR, WESTERN HEMISPHERE, THE JOINT STAFF, J-5, STRATEGIC PLANS AND POLICY DIRECTORATE, U.S. DEPARTMENT OF DEFENSE

General WHITLOCK. Chairwoman McSally, Representative Watson Coleman, distinguished Members of the subcommittee, I am Brigadier General Joe Whitlock, the deputy director for western hemisphere of strategic plans and policy, what we call J-5, in the

⁶ 42 U.S.C. § 5170a, § 5170b, § 5192.

Joint Staff. Thanks for the opportunity to address you today on the role the Department of Defense plays in supporting civil authorities during disasters.

In this testimony, we will discuss the progress DOD has made with regard to in-depth planning with the geographic combatant commands, that is U.S. Northern Command, U.S. Pacific Command, our two combatant commands responsible for DSCA.

In 2013, the Department of Defense published a standing DSCA execute order, or EXORD, that provided commanders of NORTHCOM and PACOM more delegated authority to provide critical life-saving and life-sustaining capabilities faster, including defense coordinating officers and the defense coordinating elements they bring, aircraft for disaster area search and rescue, joint task forces to command and control Federal military forces, and aeromedical patient evacuation and transportation.

DOD has also developed a wide range of chemical, biological, radiological, and nuclear—CBRN—response capabilities, and has trained to employ these capabilities rapidly to support civil authorities to help save lives in the aftermath of a CBRN incident.

DOD has also published a standing domestic CBRN response execute order in 2011 that establishes a response posture system for the Federal components of the CBRN response enterprise and provides the commanders of NORTHCOM and PACOM with authorities to conduct Federal CBRN response operation in support of a lead Federal agency, such as FEMA.

DOD has also worked closely with our interagency partners to exercise their support capabilities during disasters. Exercises are critical to ensuring readiness and identifying gaps and potential weaknesses within and across agencies in responding to man-made or natural disasters.

DOD fully supports the FEMA-led National Exercise Program. For years DOD has also hosted numerous exercises involving Federal, State, and local partners, to include our annual DSCA exercise, such as Ardent Sentry 2014 that focused on a major Alaska earthquake and Ardent Sentry 2015 that focused on a southern California earthquake. And in April this year, as you heard the earlier witnesses, the commander of U.S. NORTHCOM also hosted a senior leader seminar with Federal, State, and local partners. Again, that helps us get better left with an incident.

As the DOD objective is to ensure unity of the effort between Federal and State forces, the DOD and States have procedures in place to utilize the dual-status commander in disaster response if warranted. In 2010 dual-status commanders had only been used in delivery plan special events. We have used them in other cases since then. A dual-status commander is a military commander who may, in accordance with the law, serve in two statuses, State and Federal simultaneously, while performing the duties of those statuses separately and distinctly.

The intended benefit of appointing a dual-status commander is to facilitate unity of effort within our National response system between the State National Guard forces operating on behalf the State Governor and Federal military forces operating on behalf of the President, the Secretary of Defense, and the supported combat-

ant commander in achieving common objectives in a disaster response or in securing a special event.

Chairwoman McSally, Representative Watson Coleman, and distinguished Members of the subcommittee, that you again for the opportunity to appear before you today. I look forward to taking your questions.

Ms. MCSALLY. Thank you, General Whitlock.

The Chair now recognizes Dr. Kirschbaum.

**STATEMENT OF JOSEPH W. KIRSCHBAUM, PH.D., DIRECTOR,
DEFENSE CAPABILITIES AND MANAGEMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE**

Mr. KIRSCHBAUM. Chairman McSally, Mrs. Watson Coleman, and Members of the subcommittee, I am pleased to be here today to discuss the progress the Department of Defense has made addressing our recommendations in its defense support of civil authorities mission.

The National response framework highlights the understanding that incidents, disasters, and other emergencies are managed at the lowest jurisdictional level and are then supported by additional response capabilities as needed. In a sense, direct support from the Department of Defense is meant as a last resort.

However, the Department recognizes, as Mr. Salesses said, the Department is often expected to play a prominent role, and early on, in supporting civil authorities and must be prepared to provide rapid response when called upon. This in turn highlights the importance of vigilance in planning, coordinating, and assessing the ability of the Department to provide these capabilities.

My statement is based on reports we have issued from March 2010 through December 2014 and discusses the Department's progress in addressing our recommendations on strategy, plans, and guidance, interagency coordination, and sustaining capabilities to support civil authorities.

Despite the rapidly-developing relationships between the Department of Defense and its domestic Federal and State partners in the years after 9/11 and Hurricane Katrina, we consistently found that key defense strategy, plans, and guidance were outdated and incomplete, did not reflect new common terms or such National guidance as the National response framework.

We found during this time that the Department of Defense, and particularly the new U.S. Northern Command, were not consistently applying to domestic planning the same rigorous strategic operational and tactical planning the Department has been using for decades for more traditional military operations abroad. For example, we found gaps in guidance on command-and-control structures for Federal military forces during complex catastrophes and for the aforementioned dual-status commander concept, which is intended to be a regular Army or Air Force or National Guard officer who would command both State and Federal military forces in a domestic setting.

In response to our recommendations, the Department has made critical progress. In 2013, the Department issued an updated strategy for homeland defense and defense support of civil authorities and a critical revised joint doctrine publication. More recently,

Northern Command and U.S. Pacific Command reported that they have updated their civil support concept plans to address command-and-control issues, and DOD is now currently updating an instruction on the dual-status commander concept. DOD also agreed to address gaps we found in guidance and plans for domestic cyber incidents, but has not yet fully addressed these recommendations.

With respect to interagency coordination, we identified gaps in DOD's guidance related to who does what, translating for interagency partners DOD's terms and phrases, and management of DOD's interagency liaisons. An example of the latter was that for a time early on DOD was not aware of how many of its personnel were assigned to DHS as liaisons or in some other capacity.

To address our recommendations, the Department updated key guidance, issued an interagency partner guide, and signed a memorandum of understanding with DHS that includes key personnel management practices for interagency liaisons.

With respect to sustaining capabilities to support civil authorities, DOD has taken steps to evaluate existing capabilities and identify gaps. One of the specific gaps we identified was in planning for complex catastrophes. In 2014, DOD reported that this planning had been completed and covered such areas as complex catastrophes, wildland firefighting, and chemical, biological, radiological, and nuclear responses.

DOD continues to work on this and told us that future efforts will also include revised planning for pandemic influenza and infectious diseases and civil disturbance operations.

In conclusion, DOD has made significant progress in improving strategy, plans, and guidance, interagency coordination, and capabilities needed to support civil authorities. Our work also shows that DOD recognizes that there remains room for improvement. The gaps we identified, as well the Department's efforts to close those gaps, are also a cautionary tale about the sustained effort required by DOD and its Federal and State partners to plan in advance and coordinate constantly and closely to ensure that DOD is positioned to support civil authorities in responding to the myriad threats we face.

Looking ahead, we are beginning additional work in the area of defense support of civil authorities. These reviews will include DOD's cyber civil support, the status of the homeland response forces, DOD's preparedness for civil support in the event of a pandemic, and coordination with Federal agencies to counter improvised explosive devices in the United States.

Chairman McSally, Mrs. Watson Coleman, Members of the subcommittee, thank you for the opportunity to testify before you today, and I am happy to answer your questions.

[The prepared statement of Mr. Kirschbaum follows:]

PREPARED STATEMENT OF JOSEPH W. KIRSCHBAUM

JUNE 10, 2015

Chairman McSally, Ranking Member Payne, and Members of the subcommittee: I am pleased to be here today to discuss progress and challenges in the Department of Defense's (DOD) efforts to serve the American people through its defense support

of civil authorities (DSCA) mission.¹ The United States continues to face an uncertain, complex security environment with the potential for major disasters and emergencies, such as Hurricane Sandy in 2012. The 2013 *Strategy for Homeland Defense and Defense Support of Civil Authorities* recognizes DOD is often expected to play a prominent role supporting civil authorities and must be prepared to provide rapid response when called upon.² DOD must coordinate with a number of other agencies on its civil support mission, which include providing support during disasters and declared emergencies (both natural and man-made); providing support for restoring public health and services and civil order; providing support for National special security events; and periodic planned support. Examples of such DOD coordination with civil authorities include aiding the identification and interdiction of suspected transnational criminal organizations' activities conducted within and along the approaches to the continental United States; assisting the Federal Emergency Management Agency (FEMA) during the annual hurricane season; assisting the Department of Transportation after the I-35 bridge collapse in Minnesota in 2007; and supporting the U.S. Secret Service regarding Presidential inaugurations. In these and other events, DOD offered a broad array of resources that were developed for its warfighting mission but were brought to bear when civilian-response capabilities were overwhelmed or exhausted—or in instances where DOD offered unique capabilities.

In an effort to facilitate defense support of civil authorities across the Nation and at all organizational levels, DOD has assigned responsibilities within the Office of the Secretary of Defense (such as the Office of the Assistant Secretary of Defense for Homeland Defense and Global Security),³ the Joint Chiefs of Staff, various combatant commands (such as Northern Command and Pacific Command), the National Guard Bureau, the U.S. Army Corps of Engineers, the Defense Logistics Agency, joint task forces (such as Joint Task Force–North),⁴ the intelligence agencies (such as the National Geospatial–Intelligence Agency and the Defense Intelligence Agency), and regional interagency liaisons (such as the Defense Coordinating Officers and Emergency Preparedness Liaison Officers).⁵

My testimony is based on reports we issued from March 2010 through December 2014 that examined DOD's DSCA mission, and discusses DOD's progress in implementing recommendations that we made to strengthen: (1) DOD's strategy, plans, and guidance documents; (2) interagency coordination; and, (3) capabilities to support civil authorities.⁶

¹Defense support of civil authorities is support provided by Federal military forces, DOD civilians, DOD contract personnel, DOD component assets, and, in certain circumstances, National Guard forces in response to requests for assistance from civil authorities for domestic emergencies, law enforcement support, and other domestic activities, or from qualifying entities for special events.

²DOD, *Strategy for Homeland Defense and Defense Support of Civil Authorities* (February 2013).

³In January 2015, the Office of the Under Secretary of Defense for Policy reorganized its missions and renamed the assistant secretary of defense for homeland defense and America's security affairs as the assistant secretary of defense for homeland defense and global security. For the purpose of consistency, we will refer to the position in this report as the assistant secretary of defense for homeland defense.

⁴Joint Task Force–North, formerly referred to as Joint Task Force–6, was created in 1989 to serve as the planning and coordinating operational headquarters to support local, State, and Federal law enforcement agencies within the Southwest Border region to counter the flow of illegal drugs into the United States. In the aftermath of the September 11, 2001, terrorist attacks on the United States, the command was officially renamed Joint Task Force–North and its mission was expanded to include providing homeland security support to the Nation's Federal law enforcement agencies.

⁵A Defense Coordinating Officer is a DOD single point of contact for domestic emergencies who is assigned to a joint field office to validate requests for assistance, forward mission assignments through proper channels to the appropriate military organizations, and assign military liaisons, as appropriate, to activated emergency support functions. An Emergency Preparedness Liaison Officer is a senior reserve officer who represents their service at the appropriate joint field office conducting planning and coordination responsibilities in support of civil authorities. See Joint Publication 3–28, *Defense Support to Civil Authorities* (Jul. 31, 2013).

⁶This statement is based on the following reports that are cited throughout and include GAO, *Emergency Preparedness: Opportunities Exist to Strengthen Interagency Assessments and Accountability for Closing Capability Gaps*, GAO–15–20 (Washington, DC: Dec. 4, 2014); *Civil Support: Actions Are Needed to Improve DOD's Planning for a Complex Catastrophe*, GAO–13–763 (Washington, DC: Sep. 30, 2013); *Homeland Defense: DOD Needs to Address Gaps in Homeland Defense and Civil Support Guidance*, GAO–13–128 (Washington, DC: Oct. 24, 2012); *Homeland Defense: DOD Can Enhance Efforts to Identify Capabilities to Support Civil Authorities During Disasters*, GAO–10–386 (Washington, DC: Mar. 30, 2010); and, *Homeland Defense: DOD Needs*

This statement includes selected updates that we conducted in June 2015 on DOD's DSCA mission. Our reports contained information that we obtained from reviewing and analyzing relevant DOD documents, including the 2013 *Strategy for Homeland Defense and Defense Support of Civil Authorities*; *The DOD Cyber Strategy* from 2015; Northern Command and Pacific Command planning documents; DOD directives, instructions, and doctrine; and Northern Command capability assessments. We also conducted interviews with DOD officials within the Office of the Secretary of Defense, Joint Staff, combatant commands, military services, defense agencies, and Reserve officials. We also conducted interviews with other Federal officials from organizations such as the Department of Homeland Security (DHS), FEMA, Customs and Border Protection, Immigration and Customs Enforcement, Federal Bureau of Investigation, Drug Enforcement Agency, Centers for Disease Control and Prevention, Animal and Plant Health Inspection Service, and officials located in the El Paso Intelligence Center. More detailed information about our scope and methodology can be found in our reports. For the updates, we collected information from DOD officials on actions the Department has taken to address findings and recommendations made in our prior reports. The work upon which this testimony is based was conducted in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

DOD CONTINUES TO TAKE ACTION TO STRENGTHEN ITS DSCA STRATEGY, PLANS, AND GUIDANCE

DOD has and continues to take action to address our prior recommendations to strengthen its DSCA strategy, plans, and guidance. As we have previously reported, clear, current, and complete strategies, plans, and guidance documents are important for reflecting the direction of the Departments' civilian and military leadership, defining DOD and its components' policies and responsibilities, and sharing practices that could facilitate effective support of civil authorities. In 2005, DOD issued its first *Strategy for Homeland Defense and Civil Support*.⁷ In four reports we issued in 2010 through 2013, we found that DOD's DSCA strategies and guidance were outdated, not fully integrated, or were not comprehensive.⁸ Since 2010, DOD has taken action to address many of our findings and recommendations. For example:

- *DOD updated its strategy and doctrine for civil support.*—In 2010, and then again in 2012, we found that DOD's 2005 *Strategy for Homeland Defense and Civil Support* had not been updated to reflect the current environment in which DOD supports civil authorities. For example, while the strategy primarily discusses DOD's DSCA mission in the context of the Department's response to a weapon of mass destruction—DOD's primary focus after the 2001 terrorist attacks—it did not address the breadth of DSCA missions that DOD must be prepared to support subsequent to Hurricane Katrina in 2005. Based on our recommendation that DOD should update its strategy, in February 2013 DOD issued an updated *Strategy for Homeland Defense and Defense Support of Civil Authorities*. In this update, DOD acknowledged that National security threats, hazards, vulnerabilities, strategic guidance, and political and economic factors had evolved since the 2005 strategy, and recognized that its support to civil authorities included a broader set of missions—to include catastrophic natural or man-made disasters, pre-planned National Special Security Events (like summits and high-profile sports events), cyber attacks, and the Southwest Border counterdrug efforts. We also reported in 2012 that DOD had not updated its joint publication for DSCA and recommended that the Department needed to do so. DOD agreed with our recommendation and in July 2013, DOD updated its joint publication for Defense Support for Civil Authorities.⁹ In this update, among other things, DOD described more fully the *National Response Framework*, which is a framework based on a tiered, graduated response to major disasters and emergencies where incidents are managed at the lowest jurisdictional level and are supported by additional response capabilities, as needed.¹⁰

⁷ *To Take Actions to Enhance Interagency Coordination for Its Homeland Defense and Civil Support Missions*, GAO-10-364 (Washington, DC: Mar. 30, 2010).

⁸ DOD, *Strategy for Homeland Defense and Civil Support* (June 2005).

⁹ GAO-13-763, GAO-13-128, GAO-10-364, and GAO-10-386.

¹⁰ Joint Publication 3-28, *Defense Support of Civil Authorities*, (July 31, 2013).

¹⁰ The *National Response Framework* is a guide to how the Nation responds to all types of disasters and emergencies. It is built on scalable, flexible, and adaptable concepts identified in

- *DOD has reported that it has updated its DSCA plans.*—In September 2013,¹¹ we found that DOD did not have a clear command-and-control structure for Federal military services during complex catastrophes.¹² We found that DOD had not identified the roles, responsibilities, and relationships among command elements that may be involved in responding to such incidents across multiple States. This issue was illustrated by events such as National Level Exercise 2011 that examined DOD's response to a complex catastrophe. Similarly, DOD's after-action reports on Hurricane Sandy in 2012 found that the command-and-control structure for Federal military forces was not clearly defined, resulting in the degradation of situational awareness and unity of effort, and the execution of missions without proper approval. Northern Command officials agreed with our findings and stated that they would address this issue and the associated recommendation we made in our report by updating their DSCA plans. As of June 2015, DOD reported that Northern Command and Pacific Command had updated their DSCA plans to address our recommendation.
- *DOD implementation guidance on the use of dual-status commanders is in development.*—DOD established the dual-status commander structure—active-duty military or National Guard officers who command State and Federal responses to civil-support incidents and events—and has used this structure for certain events.¹³ For example, DOD used the dual-status commander structure for the 2012 Colorado wildfire response and the Hurricane Sandy response. In October 2012, we reported that DOD had not developed guidance for the use of dual-status commanders for incidents affecting multiple States and territories.¹⁴ For example, DOD had not developed specific criteria and conditions for when and how State Governors and the Secretary of Defense would mutually appoint a commander. Consequently, we recommended and DOD concurred that the department develop implementation guidance on the use of dual-status commanders. In June 2015, Northern Command officials reported that an instruction about dual-status commanders was being drafted in coordination with DOD, Northern Command, and the National Guard Bureau.
- *DOD has agreed to take steps to align cyber support roles and responsibilities.*—In October 2012, we found that DOD had not updated its DSCA guidance, such as joint doctrine, to ensure that it was consistent with National plans and preparations for domestic cyber incidents.¹⁵ We recommended that DOD align guidance on preparing for and responding to domestic cyber incidents with National-level guidance to include roles and responsibilities. DOD partially concurred with this recommendation. However, the Department has not yet taken action that meets the intent of the recommendation.

DOD HAS TAKEN ACTION TO STRENGTHEN INTERAGENCY COORDINATION FOR SUPPORT OF CIVIL AUTHORITIES

DOD has and continues to take action to address our prior recommendations to strengthen the Department's interagency coordination for support of civil authorities. As numerous events within the homeland in the last decade have pointed out, it is critical that DOD coordinate, integrate, and synchronize its DSCA mission with a broad range of interagency partners that the Department may need to support. Such partners can include FEMA, Federal Bureau of Investigation, Customs and Border Protection, Animal and Plant Health Inspection Service, and the Centers for Disease Control and Prevention. As we have previously reported, there are three key areas that DOD needs to focus on to enhance and institutionalize its interagency coordination efforts. DOD has since taken action to address these areas:

the National Incident Management System to align key roles and responsibilities across the Nation. This framework describes specific authorities and best practices for managing incidents that range from the serious but purely local to large-scale terrorist attacks or catastrophic natural disasters. The *National Response Framework* describes the principles, roles, and responsibilities, and coordinating structures for delivering the core capabilities required to respond to an incident and further describes how response efforts integrate with those of the other mission areas.

¹¹ GAO-13-763.

¹² DOD has defined a complex catastrophe as a natural or man-made incident, including cyber space attack, power grid failure, and terrorism, which results in cascading failures of multiple interdependent, critical, life-sustaining infrastructure sectors and causes extraordinary levels of mass casualties, damage, or disruption severely affecting the population, environment, economy, public health, National morale, response efforts, and/or Government functions.

¹³ Dual-status commanders are military commanders who serve as an intermediate link between the separate chains of command for State and Federal forces.

¹⁴ GAO-13-128.

¹⁵ GAO-13-128.

- *DOD Has Better Defined Interagency Roles and Responsibilities.*—Previous GAO work, the *National Response Framework*, and DOD strategic guidance identify the need for clearly-defined roles and responsibilities to enhance interagency coordination.¹⁶ In our 2010 review of DOD’s interagency coordination efforts, we found that the key documents used to define roles and responsibilities were outdated, not fully integrated, or were not comprehensive.¹⁷ We found that DOD’s series of civil-support policies and guidance, such as a 1997 DOD directive on military assistance to civil authorities,¹⁸ were outdated and did not reflect changes that occurred subsequent to their issuance. For example, the guidance documents did not refer to DHS, the Office of the Assistant Secretary of Defense for Homeland Defense, Northern Command, or roles and responsibilities under the *National Response Framework*. Similarly, we found that roles and responsibilities for support to law enforcement—including Joint Task Force–North, which provides defense support of civilian law enforcement agencies along U.S. borders—were unclear as were the roles and responsibilities between the Assistant Secretary of Defense for Health Affairs and the Assistant Secretary of Defense for Homeland Defense. Consequently, we recommended and DOD concurred that the Department should update key documents that outline roles and responsibilities. Subsequently, DOD has, for the most part, issued new guidance documents or updated older guidance to better define roles and responsibilities within the Department for interagency coordination.
- *DOD has issued an interagency partner guide.*—DOD’s joint doctrine on interagency coordination and support of civil authorities notes that a unified “whole-of-Government” approach to National security issues requires Federal partner agencies to understand core competencies, roles, and missions and that sharing information is critical for the success of interagency coordination between Federal agencies.¹⁹ To support interagency coordination on DSCA, DOD has taken action to communicate with its Federal partners through conferences and other forums and multiple documents. In our 2010 review of DOD’s interagency coordination efforts, we found that DOD’s approach to communicating with Federal partners could be improved, and the Department had not clearly identified the roles and responsibilities and day-to-day coordination processes with its Federal partners through a single, readily accessible source.²⁰ Specifically, DOD, DHS, and the Department of Justice officials told us that the benefits gained through interagency forums, such as Homeland Security Council meetings and annual National Interagency Fire Center conferences, are transient because they depend on personnel who rotate out of their positions frequently. The National Interagency Fire Center had addressed this challenge by creating a partner handbook that identified key information. DOD had not developed a similar vehicle for institutionalizing its information-sharing efforts so that Federal partners could maintain knowledge and have readily accessible information about key issues, such as the different DOD entities that have DSCA missions. For those cases where DOD internally documented its missions, roles, and responsibilities, we found the information was dispersed among multiple sources; also, the documents may not have always been readily accessible to Federal partners, and they may have been written in a manner that led to unclear expectations. Therefore, we recommended that DOD develop and issue a partner guide that identifies the roles and responsibilities of DOD entities, processes, and agreed-upon approaches for interagency coordination for homeland defense and civil-support efforts. DOD concurred with our recommendation and, in November 2011, issued its *Defense Support of Civil Authorities Interagency Partner Guide*.
- *DOD has taken action to implement key practices for managing some liaisons the Department exchanges with its Federal partners.*—Prior GAO reports and DOD guidance recognize that leading organizations employ key practices for effective and efficient workforce planning, such as situational awareness, staffing-needs assessments, position descriptions, training, and performance assess-

¹⁶ DHS, *National Response Framework*, Second Edition (May 2013); DOD, Joint Publication 3–08, *Interorganizational Coordination During Joint Operations* (June 24, 2011); GAO–10–364; DOD, *National Defense Strategy* (June 2008); and GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration Among Federal Agencies*, GAO–06–15 (Washington, DC: Oct. 21, 2005).

¹⁷ GAO–10–364.

¹⁸ DOD Directive 3025.15, *Military Assistance to Civil Authorities* (Feb. 18, 1997).

¹⁹ Joint Publication 3–28, *Defense Support of Civil Authorities* (July 31, 2013); and Joint Publication 3–08, *Interorganizational Coordination During Joint Operations* (June 24, 2011).

²⁰ GAO–10–364.

ments.²¹ However, in our 2010 report, we found that DOD had not implemented such key practices.²² For example, DOD did not have complete situational awareness of all the liaisons detailed to its interagency partners. According to DOD records, in 2009, there were only 2 DOD personnel at DHS headquarters—yet an informal survey by the representative for the Office of the Assistant Secretary of Defense for Homeland Defense to DHS found that more than 110 DOD personnel, from a variety of DOD entities, were working at DHS as liaisons, subject-matter experts, or in other capacities.²³ Therefore, we recommended and DOD agreed that DOD develop and issue additional workforce management policy and guidance regarding DOD liaisons to other Federal agencies, as well as other Federal agencies' liaisons to DOD. In October 2013, the deputy secretary of defense and the acting deputy secretary of homeland security signed an updated memorandum of agreement that outlines ways in which DOD and DHS will incorporate key practices for managing liaisons in the National capital region.

DOD HAS TAKEN ACTION TO IDENTIFY NEEDS AND ADDRESS CAPABILITY GAPS
REGARDING ITS SUPPORT OF CIVIL AUTHORITIES

In response to our prior recommendations, DOD has taken action to identify needs and address capability gaps for its DSCA mission. In the 2014 *Quadrennial Defense Review*, DOD notes that the key pillar of protecting the homeland includes sustaining capabilities to assist U.S. civil authorities in protecting U.S. airspace, shores, and borders, and in responding effectively to domestic man-made and natural disasters.²⁴ In 2008, DOD conducted a capabilities-based assessment of its homeland defense and civil support missions to enable improvements for DOD homeland defense and civil-support policy, evaluate existing DOD capabilities and identify capability gaps, improve DOD's integration with interagency mission partners, and recommend further action to promote future capability development. In 2010, we found that DOD and DHS had undertaken initiatives to address gaps in strategic planning that should assist DOD in identifying its capability requirements for the DSCA mission.²⁵ For example, DOD and DHS issued catastrophic plans for responding to and recovering from a category 4 hurricane in Hawaii. In addition, DHS had established a pilot initiative entitled Task Force for Emergency Readiness pilot initiative that sought to integrate Federal and State planning efforts for catastrophic events, which in turn would assist DOD in determining the capabilities it may be asked to provide. However, we found that DOD's DSCA policy and guidance was outdated, which limited DOD's ability to address capability gaps. We therefore made a recommendation and DOD concurred that the Department should update its DSCA guidance. Since then, DOD has updated or replaced several DSCA guidance documents, such as DOD Directive 3025.18.²⁶ By updating this guidance, DOD addressed our recommendation and DOD is in a better position to address remaining capability gaps.

Additionally, we found in 2013 that DOD had not taken all of the necessary steps to identify capabilities for DSCA. Additionally, we found in 2013 that DOD had not taken all of the necessary steps to identify capabilities for DSCA.²⁷ Specifically, we found that Northern Command and Pacific Command were updating their DSCA plans to include a scenario for a complex catastrophe; however, the commands delayed identification of capabilities that could be provided to execute the plans in light of FEMA's plan to complete its regional planning efforts in 2018. We recommended that the commanders work through the defense coordinating officers to

²¹ DOD Instruction 1315.18, *Procedures for Military Personnel Assignments* (Jan. 12, 2005); DOD Instruction 1400.25, *DOD Civilian Personnel Management System* (Nov. 18, 2008); DOD Instruction 1000.17, *Detail of DOD Personnel to Duty Outside the Department of Defense* (Apr. 16, 2008); GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, GAO-04-39 (Washington, DC: Dec. 11, 2003); and GAO, *A Model of Strategic Human Capital Management*, GAO-02-373SP (Washington, DC: Mar. 15, 2002).

²² GAO-10-364.

²³ In responding to a draft of this statement, DOD stated that, according to a 2004 DOD-DHS memorandum of agreement on personnel exchange, there were at least 38 DOD personnel detailed to (or assigned as liaisons at) DHS headquarters and 86 DOD personnel to DHS, in general. However, during the audit, DOD documents and officials reflect that DOD's numbers were inaccurate and that the officials did not have an exact count on the number of DOD personnel located at DHS headquarters or throughout the DHS organization.

²⁴ DOD, *Quadrennial Defense Review 2014* (Mar. 4, 2014).

²⁵ GAO-10-386.

²⁶ DOD Directive 3025.18, *Defense Support of Civil Authorities* (DSCA) (Dec. 29, 2010, incorporating change 1, Sep. 21, 2012).

²⁷ GAO-13-763.

develop an interim set of specific capabilities that could be provided to prepare for and respond to complex catastrophes while FEMA completes its plans. DOD concurred with our recommendation and, in May 2014, according to DOD officials, Northern Command and Pacific Command had updated their plans to incorporate complex catastrophes, including identifying capabilities that would be available to the lead Federal agency during such an event. Specifically, DOD officials told us, in June 2015, that planning had been completed, covering issues such as complex catastrophes; wildland firefighting; and chemical, biological, radiological, and nuclear response. Additionally, DOD officials told us that future planning efforts will include additional branch plans addressing issues such as pandemic influenza and infectious diseases and civil disturbance operations.

Under the *National Response Framework*, the U.S. Army Corps of Engineers serves as the coordinator for the “Public Works and Engineering” emergency support function—1 of 14 emergency support functions that serve as the Federal Government’s primary coordinating structure for building, sustaining, and delivering response capabilities.²⁸ The U.S. Army Corps of Engineers, in its emergency support function coordinator role, is responsible for engaging in appropriate planning and preparedness activities, which could include establishing capability requirements, cataloguing current capabilities, and conducting capability gap analyses that might be needed if the Federal Government is asked to support local, State, Tribal, territorial, and insular area Government response operations during a disaster. In a recent assessment of the Federal preparedness to respond to no-notice catastrophic disasters, such as improvised nuclear device attacks and major earthquakes, we found that the U.S. Army Corps of Engineers had taken an insular approach to identifying, cataloguing, and analyzing gaps for public works and engineering capabilities.²⁹ Since we concluded that the U.S. Army Corps of Engineers’ actions—as well as actions by other non-DOD agencies that serve as coordinators for different emergency support functions—were attributable to unclear guidance, and recommended that FEMA issue supplemental guidance to the agencies that serve as coordinators for the different emergency support functions.³⁰ FEMA concurred with this recommendation and estimated that it would complete this supplemental guidance by June 30, 2015.

In conclusion, threats to the homeland and major disasters and emergencies, such as cyber attacks and earthquakes, frequently are unpredictable or occur with little or no notice. DOD’s 2014 *Quadrennial Defense Review* emphasizes protecting the homeland, including deterring and defeating attacks on the United States and supporting civil authorities in mitigating the effects of potential attacks and natural disasters, as the first of the defense strategy’s three pillars. DOD has made significant progress in improving strategy, plans, and guidance; interagency coordination; and capabilities needed for DSCA. Our work also shows that there remains room for improvement and that DOD recognizes this and intends to fully address the remaining recommendations from our prior reports. We continue to believe that their implementation will buttress the advanced planning and interagency coordination effort DOD requires to support civil authorities in responding to the myriad threats and challenges we face. On that note, looking ahead, we will continue to monitor and evaluate: (1) DOD’s cyber civil support, (2) the status of the homeland response forces, (3) DOD’s preparedness for civil support in the event of a pandemic, and (4) coordination with Federal agencies to counter improvised explosive devices in the United States.

Ms. MCSALLY. Thank you, Dr. Kirschbaum.

I now recognize myself for 5 minutes for questions.

I will first say, in my 26 years in the military I had zero dealing with this issue, defense support to civil authorities, zero experience dealing with this issue, which I think probably is the preponderance of military personnel, just as a framing mechanism there, un-

²⁸The *National Response Framework* states that the Secretary of Homeland Security is to ensure that overall Federal preparedness actions are unified, complete, and synchronized to prevent unfilled gaps or seams in the Federal Government’s efforts to respond to all hazards. The emergency support functions are organized by specific functional areas for the most frequently needed capabilities during an emergency—including communications, medical services, and search and rescue—and are designed to coordinate the provision of related assets and services by Federal departments and agencies. See DHS, *National Response Framework, Second Edition* (May 2013).

²⁹GAO-15-20.

³⁰FEMA serves as the chair of the Emergency Support Function Leadership Group.

less you are in a specific job that has to deal with it. But my views on it are formed and shaped by my experiences at Africa Command working with military support to USAID OFDA overseas, and we were dealing with overseas response to disasters.

What I saw was oftentimes basically the military, we would show up, beyond the sort-of inherent danger, and we would be like we are in charge because we are very action-oriented and then we are just going to figure it all out. We don't even realize there is another lead Federal agency there. We have just got colonels and lieutenant colonels, they want to do the Lord's work out there and save people's lives, and so they just get going. There is often very confusing, cumbersome, and in a very chaotic environment to start with, there are turf battles, there is misunderstanding, there is not a unity of effort.

So I have got a lot of experience with that overseas. So I would imagine in looking at this and preparing for this hearing we have similar dynamics that could happen here at home in response to an emergency, especially when you are dealing with getting Active-Duty Forces involved with many individuals in the chain of command not necessarily understanding what the roles and responsibilities are, what the legal authorities are.

Again, aside from that, the imminent danger, and then doing life-saving response, it seems we have got some examples of that even as recently as Hurricane Sandy, right, where we had Marines showing up like we are going to start doing a bunch of stuff that maybe they don't even have the legal authority to do.

So my question really, Mr. Salesses and General Whitlock, is: What are we doing to make sure that the military understands, especially the chain of command understands, their role and responsibility? It is too late to be teaching them about that when you are in the middle of responding to something up and down the chain of command?

Mr. Fenton, or anybody want to give some after-action lessons identified from Sandy and any responses since Sandy related to, again, maybe turf battles or misunderstandings of roles and responsibilities and what we can do to fix that in the DSCA mission?

Mr. SALESSES. Chairman McSally, I will start if you don't mind.

You are absolutely right. Having had the opportunity to work overseas in humanitarian disaster relief events, it is very chaotic. Although we have great partners in the international area too, with Department of State, USAID, and OFDA, I can tell you from my experience that the way we are organized domestically far exceeds the way that we are organized to do overseas humanitarian disaster relief.

That really starts with the National response system, the National response framework. The work that FEMA has done to organize the Federal Government in particular, and the ESF structure, and the way that they manage things under Administrator Fugate's leadership really makes a difference here at home, first of all, in bringing together the Federal departments and agencies and the way that we do this.

Your point about education, training, exercising, planning, I think all of those things are critical to this issue of making sure that people understand their roles and responsibilities. Everything,

of course, starts with authorities. I think in my statement recognizing right up front we play a supporting role, we recognize the environment that we are in here, and the Defense Department is prepared to support our Federal partners in their efforts.

But we do spend a lot of time educating and training. Northern Command, which you are familiar with out in Colorado Springs, actually runs five different education courses. They run the DSCA executive course, which is a 2-day course, and they bring in State emergency management, local emergency management, other Federal partners, and military members, Active, Reserve, and Guard. They have a regular week-long course. They run the dual-status commander force, along with the National Guard Bureau. So there is a lot of work underway to continue to educate people.

I would also say very quickly that there has been a tremendous evolution in the Defense Department in understanding its responsibilities for defense support to civil authorities, and I can talk more about that. I don't want to overuse my time. I will give somebody else an opportunity.

General WHITLOCK. Chairwoman McSally, I agree with everything Mr. Salesses has said. Just one kind of top-level thing. NORTHCOM was formed in 2002 in response to the terrorist acts of September 11, 2001, and I think we have made significant progress. I served at NORTHCOM as the Deputy J-5, and I was there for Hurricane Sandy response.

A key is training, exercises, and education, and oftentimes you won't have officers that have done that if they were just on the Federal side. But we have a great civilian workforce out there. Those officers get up to speed quickly. As you might know in your AFRICOM experience, the supporting and supported commander relationship, we understand that. We have operationalized that across the Department of Defense, with NORTHCOM being the supporting command for DSCA or PACOM if there is an incident in the PACOM area.

Ms. MCSALLY. Great. Thanks.

There is a lot of discussion about support to FEMA, but there is a great potential that the military will be called to support other agencies as well, even within DHS, whether it is Customs and Border Protection, HHS for some sort of health crisis, DOJ. So it seems like a lot of work has been done related to integration with FEMA, but could you speak to integration with those other agencies that you might be called to support as well?

Mr. SALESSES. We actually do a lot of work with the other departments and agencies. I will pick HHS as an example. Assistant Secretary Nicki Lurie and her staff, we spend a lot of time working with them, just like we do with Mr. Fenton and his team, but specifically focused on the public health response kinds of activities. The Department of Defense in particular is responsible, along with HHS and VA, to support natural disaster medical system. That is where we provide transportation of critical care patients, and in particular USTRANSCOM has the responsibility to air lift critical care patients, and we have done that in a number of disasters.

We also work with HHS on their Federal medical staging stations. They are responsible for standing up these. We work very closely with them on planning and looking at the kinds of capabili-

ties that the Department of Defense could provide beyond the Public Health Service capabilities that would be available in a disaster.

Ms. MCSALLY. Great. Thanks. My time is well expired. I hope we get a second round of questions here, but I appreciate your responses so far.

So the Chair now recognizes Mrs. Watson Coleman.

Mrs. WATSON COLEMAN. Thank you, Madam Chairman.

Thank you very much. I really have a respect for the work that you do and how difficult and complicated the issues that you confront are. In fact, I was reading through the material last night, and I was absolutely struck by all the different protocols and touch points and responsibilities. So I have got a couple of questions regarding how that is actually working.

The Chairman spoke for a moment about the issue of the Marines deploying under Sandy in New Jersey before being asked to and before having the authority to do that. Specifically, what is done to avoid that happening again? I don't even know who answers that. I am sorry. Staten Island. Just right across the bridge.

General WHITLOCK. Ma'am, I will take that question. We have done extensive after-action reviews, and we have lessons identified, and I think we are learning them now.

In my military career, Hurricane Sandy was the most extensively after-action-reviewed event I have done. NORTHCOM did a really complex and thorough one with its components and partners with the National Guard Bureau and OSD and even FEMA there, and I saw that go up through the Department of Defense.

So I think we continue to learn and understand, and we will constantly have the training and education challenges, new Members come in, or Marines that are operating off the coast in the area or in proximity to respond, how they respond, but also the Defense Coordinating Officer is key and integral there, each one of those in FEMA region, his or her team. Then NORTHCOM has what the command calls a Title 10 deputy, and there is a Title 10-06 colonel or Navy captain that goes out and helps that dual-status commander or that adjutant general. So those are key players in making sure that we have the right command and control.

Mrs. WATSON COLEMAN. Thank you. That kind of leads me to Dr. Kirschbaum, because I did notice that there are a lot of offices, there are a lot of protocols, there are a lot of memorandums of understanding, there is a lot of positioning of one Department's staff in another Department's office for certain issues.

So from a Government accountability perspective, are we doing all that we need to be doing in the leanest, most effective way, cost-effective and efficient way, or have we overresponded to the things that we haven't done well that we are creating layers and layers and potential contradictions and confusion? Dr. Kirschbaum.

Mr. KIRSCHBAUM. Thank you, Mrs. Watson Coleman.

One of the things that we noticed over time in particular, when we look at the kind of planning necessary to do this kind of response to major disasters and what-not, it requires, as we talked about, fast levels of planning, and particularly in the case of the Department of Defense, where the focus for decades has not been on that kind of planning here in the homeland.

There is extra effort involved. We saw a lot early on, especially when U.S. Northern Command was establishing, where there was a lot of effort, but the outcomes weren't as satisfactory because of those things. Lots of activity that wasn't necessarily coordinated and planned.

Fortunately that has gotten better. General Whitlock mentioned the after-action reviews. We love after-action reviews, for two reasons. No. 1, because it helps us identify those things that tend to be recurring problems. So that is obviously the indicator that things like the ever-present interoperability issues with communications. They are in the Sandy AAR. So you pay attention to those.

We also love them because it shows materially how seriously the Department takes looking at exercises. The way the Department exercises, they exercise to break things, figure out where the problems are, and fix them. So they are very good in that score.

The overarching issue for us is when it comes to planning for these kind of things, is that it is a plant that needs to be watered all the time. You have to have a plan, know the plan, test the plan, and that has to happen every single day. So the level of effort that applies to that often is a very high level of effort. So it is up to the departments to determine in doing that over time you become more efficient because you have done it and you recognize where the pain points are, where you are doubling up effort, and where you can afford to make the risk-management decision so you don't end up double-counting.

Mrs. WATSON COLEMAN. It just seems very confusing the way some of the protocols were identified, who does what, when, under what circumstances, who is in the FEMA office that doesn't work for FEMA but brings an expertise from someplace else. So just for someone from the outside looking in, particularly for the first time, it just seemed like there were a lot of steps and touchstones and protocols and memorandums of understanding and whatever. I am just wondering how long does it take to execute from the time that you know that you are needed to the time that you actually get some resources into that area, if there is an answer to that?

Mr. SALESSES. I think there is. It is a fascinating system, our National response system, a Federalist system built on a transactional process with systems within systems. You are right, there is a tremendous amount of activity and organizations involved in this. But the way that I think that we have collectively tried to deal with that is by understanding what the State needs are and translating those State needs into prescribed mission assignments, identifying capabilities that are needed.

FEMA manages that process. We in DOD have 28 prescribed mission assignments. Those are essential for translating the task that needs to be done into military-speak and the kinds of capabilities that are needed.

Then we mentioned, General Whitlock and I both mentioned the DSCA EXORD. That is actually a document where we have gone through and identified military capabilities and postured them on time lines so that those capabilities will be made available rapidly to support our Federal partners in that regard. That is just the beginning part of the discussion.

Mrs. WATSON COLEMAN. I know there were lots of lessons learned in Katrina, and I know that there are still lessons being learned from Sandy. Is Sandy the event that you employed this sort-of new system of checks and balances and accountabilities and identification? Is that the only event that we can tell whether or not you are responding more quickly, more effectively, more efficiently, or is there something that I am missing, some other incident? Thank you.

Mr. SALESSES. I would say probably Sandy, but we also learned a lot from a number of events around the world, Haiti in particular, the Fukushima earthquake and tsunami. When those events happen, we collectively get together and plan to look at what was needed in those cases, and we refine our processes. But to employ the DSCA EXORD, we did use that in Sandy to provide capabilities.

Then the other thing is, I spoke in my opening statement, the Department of Defense does more than provide military capabilities, when you think about the Corps of Engineers and what they did in Sandy, pumping out the tunnels, helping the city and the State in regards to dewatering and the kinds of things that were necessary, the Defense Logistics Agency, which provided over 9 million gallons of fuel for the 2,500 gas stations that were out up there.

When you start to look at the cascading effects of infrastructure and what happened, the ability to rely on the Defense Department initially is very, very important. So maximizing our capabilities with the Corps of Engineers, using DLA, using USTRANSCOM, which airlifted utility vehicles from the West Coast to the East Coast to help out the power companies, again working with the Department of Energy. So understanding this and pulling this all together is a pretty significant task.

Mrs. WATSON COLEMAN. Thank you.

Thank you, Chairman, for your indulgence.

Ms. MCSALLY. Absolutely.

The Chair will now recognize other Members of the subcommittee for questions they may wish to ask the witnesses. In accordance with the committee rules and practice, I plan to recognize Members who were present at the start of the hearing by seniority on the subcommittee. Those coming in later will be recognized in the order of arrival.

The Chair now recognizes Mr. Loudermilk from Georgia.

Mr. LOUDERMILK. Thank you, Madam Chairman, and I appreciate everyone being here.

September 11 was a wake-up call for our Nation. During my time in the military during the Cold War most of our emphasis was defending the homeland, but it was abroad. September 11 showed how vulnerable we were. Since 9/11, we have seen a growing emphasis on local and State, the needs of local and State, for support with the increase of natural disasters and the impact of those disasters, terrorist attacks, civil unrest, riots, violent protests, and those continue.

I have worked on both sides of that, from the purely Federal side, as well as in the last several years working with our State and local as boots on the ground and in the air and search and res-

cue and disaster response. One of the things that I have seen from working both with the purely Federal side and our State is the National Guard has unique capabilities for working in those local disasters for several reasons.

Of course, our purely Federal Department of Defense has constraints on them such as the Posse Comitatus that the National Guard doesn't have. The National Guard also has been working with local law enforcement. They usually know the local law enforcement, the local emergency management agency heads. They are from those communities, and they are continually doing joint exercises.

From working on that side, I have seen that the response, the coordination, and the flexibility to transition, especially if it is under Title 32, to transition from purely just disaster response to assisting law enforcement is there that we don't have on the Federal side. Also, and rightly so, purely on the DOD, there is a constraint that it cannot degrade our National security posture.

With that, Mr. Saleses, a question for you is, I understand that the DOD has made some changes to DOD Instruction 3025.22 recently as it regards to the National Guard and the response. Can you describe what those changes were and what effect that is having?

Mr. SALESSES. Absolutely, Congressman. First of all, you are absolutely right too, the National Guard is a tremendous capability and available to the Governors, and as I spoke to, with EMAC it is able to pull resources together and be a very, very effective organization in supporting the Governors in those responsibilities.

But as we look at the National response system, and I am going to defer to my partner here, Bob Fenton, part of that National response system is, as you opened, is State responsibilities. Clearly when there is an event in the State, the State will deal with it or use the EMAC.

When it goes beyond that, the Governor obviously has the opportunity to declare the Stafford Act. The Stafford Act, as we all know, provides Federal resources. It also provides the capability for the State to be reimbursed through the DERF fund, and there is almost \$8 billion, I understand, in the DERF fund today. That fund is there to fund the National Guard and State response, and so clearly that is the most effective way to do that.

The challenge going forward in Title 32 is when we want, the Defense Department, the Defense Department has determined that we have a requirement from FEMA that we are going to employ the National Guard in. When we do that and we determine through the sourcing process that the National Guard as opposed to the Marine Corps or the Army or the Air Force has the best capability to support that, we can ask the Governor consent to put National Guardsmen in Title 32. That is what that directive is all about, and that is what it is designed to do.

Mr. LOUDERMILK. Well, my question was: What changes have been made recently to the standing procedures?

Mr. SALESSES. No changes. It was just the policy was codified. That is what the directive does. It codifies the policy that has been in long existence.

Mr. LOUDERMILK. Okay. So you are saying there were no changes recently to DOD Instruction 3025.22?

Mr. SALESSES. It was published. It was published a couple years ago. The process and the way that the Department operates and supports the use of Title 32 has been employed that way, and the policy codified that.

Mr. LOUDERMILK. Okay. I will reserve other questions for the next panel. Thank you.

Ms. MCSALLY. Great. Thanks.

The Chair now recognizes Mr. Langevin from Rhode Island.

Mr. LANGEVIN. First of all, I want to thank our panel of witnesses here today. Madam Chair, thank you for letting me sit in on this first panel.

If I could, let me begin with Mr. Saleses. I am pleased to hear that all of the witnesses touched on cybersecurity in their testimony. Some of them spent quite a bit of time on it. I would like to dig a little deeper into DSCA's role with respect to a cyber incident.

So, Mr. Saleses—who, for the record, I want to mention hails from my own alma mater, Rhode Island College, so it is good to see a Rhode Island College alum here—per JP 3–28, DSCA's operations, DOD forces may be required to assist and local networks to operate in a disrupted or degraded environment.

With that in mind—and I would like to ask all of our witnesses in your answers to be brief because I have a slew of questions—in the event of a cyber attack, how would determination be made that DOD forces would assist civil authorities, and what is the threshold for involving them? Have those things been worked through yet?

Mr. SALESSES. Congressman Langevin, I apologize, but cyber is not an area under my purview. But my understanding obviously is if there is support needed at the State level, that the DHS and DOJ would request DOD support, which would be the normal course. But, again, this is out of my purview, so I am glad to take questions related to cyber.

Mr. LANGEVIN. Okay. Would we turn to FEMA then? Would that be something that has been worked out under your jurisdiction?

Mr. FENTON. Sure. The part that would fall into FEMA's responsibility is the consequences of a cyber event. So if there were physical consequences of that event, we would look at it as the same as with regard to those consequences of any other type of event and look at the authorities within the Stafford Act to be able to provide support to State and local governments in support of requirements.

One of the things that we have recently done is looking at the cyber threat and look at areas of critical infrastructure that may be most threatened from that is power and utilities. So what we are doing this year is developing a long-range power outage plan and how we respond and support the private sector with regard to assisting them and getting systems back up and operational and those kind of things.

From a crisis perspective, you are really looking over at FBI, the NCCIC within the Department of Homeland Security where those authorities sit, to respond to the crisis, and FEMA's responsibility would really be the consequences of such an event.

Mr. LANGEVIN. Maybe I would go back to Mr. Salesses. Who within DOD or DSCA would be responsible for a cyber-related event where DOD would be involved?

Mr. SALESSES. Congressman, we have an office, deputy assistant secretary for cyber, that oversees the policy for that. Of course we have Cyber Command, the operational command that would oversee the kinds of support that the Defense Department would provide.

Mr. LANGEVIN. But how would the assistant secretary of cyber interact with civil authorities? Has that been worked out yet?

Mr. SALESSES. Sir, again, a little out of my purview. I will do the best I can. Normally it would be very similar to what we do here in defense support to civil authorities as it relates to disasters. Normally if the State and local need support, they go to the Federal department, in this case the Department of Homeland Security and DOJ and the FBI. Then in turn, if one of those Federal agencies didn't have the capability to assist in that regard and they needed DOD resources, they would come to us and we would support that Federal agency down to the State and local level.

Mr. LANGEVIN. Very good. Would GAO have something to say about that?

Mr. KIRSCHBAUM. Mr. Langevin, thank you for the question. We are actually currently starting work to look specifically at that issue, and our most recent work was from 2013. My understanding is there are still a lot of questions about just the things you are asking. We ask mostly, like at U.S. Northern Command, they understand that they are responsible for command and control of Federal forces that are applied to civil support, and this would be one of those cases.

I think what the Department is working on is how that chain would work, where the request would go from Northern Command and others, who would it go to, what is the right scope of the operations in terms of what they would do. Those are all still under consideration.

Mr. LANGEVIN. I think these are obviously vitally important to get answered now since it is in the cyber domain, where milliseconds matter. How quickly we can work things out would be essential.

Mr. SALESSES. Congressman, if I could add, in this case, Cyber Command would be the supported combatant command, not NORTHCOM. So the bottom line is any request for cyber support from the Defense Department would come through the OSD element into the combatant command, in this case, Cyber Command, not NORTHCOM.

Mr. LANGEVIN. Very good.

Well, my time has expired. I have a bunch of other questions. Maybe we will get to a second round. But thank you.

I yield back.

Ms. MCSALLY. Thank you, Mr. Langevin.

The Chair now recognizes Mr. Donovan from New York.

Mr. DONOVAN. Thank you, Madam Chair.

First of all, gentlemen, I would like to thank you. I represent Staten Island. For the people of my community who you came to help during our time of disaster—one of the things Government

should do for their citizens is come to their aid in the time of disaster, and you did. So thank you on behalf of all the people of Staten Island and southern Brooklyn.

I saw first-hand, sir, what you are talking about, pumping out those tunnels in my city. So I just wanted to take a moment to thank you.

A lot of the questions I had were already asked, but I understand, when you were saying that you learned lessons from Katrina, that you applied to your methods in dealing with Superstorm Sandy and the aftermath there.

Are there any things that you, now looking back—you said you would do an assessment afterward. Are there things, looking back now in the response to Sandy, that you wish you had known then to help back then 2½ years ago? Anyone.

Mr. SALESSES. Congressman, thank you for those comments.

I think in disasters there is a common set of issues that we continually improve upon. The first is gaining situational awareness. Because of the Federalist system that we operate in, you can imagine how complex that is, the five boroughs of New York City and the ability to provide the insight from those boroughs to the mayor of New York City and then from the city to the State government in Albany and through that process. It is a very challenging process. So the ability to gain situational awareness for what is needed rapidly is a real challenge.

The way that I believe—and I will let my friend Bob talk more about this. One of the things that FEMA has done is expanded their IMAT capability to include additional expertise. So when we send out an IMAT, which is basically an assessment team that FEMA has that works with the State and locals to determine that, I think it begins to gain that.

But I think there is other improvements that can be made. I think the requirements generation process, for lack of a better term, the ability to generate the requests for assistance from the local to the State level and then from the State level to the Federal level, is quite a process. By using pre-scripted mission assignments, I think that is helping. But that can always be done better, in my view.

I think the other thing that is key is the investment that we make in our partnerships on a daily basis. I think that is a key aspect of what we all do at the Federal, State, local level, private industry, volunteer organizations. I think it is critical to being successful in this area.

Then the leadership. I can tell you, from my vantage point at the Defense Department, during that whole period of Sandy—and Joe was there—the Secretary of Defense, the chairman of the joint chiefs, the service chiefs, the combatant commands—NORTHCOM, TRANSCOM—all the most senior officials in the Defense Department met once, sometimes twice, a day to figure out how the Defense Department could be more effective.

I think with FEMA providing the requests directly to the Defense Department for things that haven't even been asked for yet is very, very effective. Chief of the National Guard Bureau was in that meeting. Every day we would work together to figure out what we could do to be more effective.

Mr. FENTON. I would just add, you know, as someone that has been at FEMA for 20 years and has been the operations chief for 9/11 in New York at Ground Zero and Katrina in Mississippi and then was helping with Superstorm Sandy for the first week and a half there, in these events, in the early hours, there is a fog of war that happens.

Our administrator all the way up to the President, you know, is—you know, we are going to preposition resources. In fact, our administrator says, “Think big. Go big. Go fast. But be smart” in what we do. So we are going to move to make sure we have the right resources from the Federal Government prepositioned, anticipating requirements.

So, as this fog of war happens—and I think, you know, good Americans wanting to help other Americans in need respond to those. I think what we are trying to do now is do more deliberate planning—and I touched on that—not only doing it at the National level, but doing it really at the whole community level with States, local governments, private sector, nonprofits being part of that, to understand really what is the true capability, what are the gaps, so we can better determine, to Bob’s point, what are the resource requirements, how do we better identify where they are coming from and logistics time frames and get them there to make a difference.

So I think what we learned from Sandy, obviously, is the huge requirements from water and some of the other missions that we really didn’t get into previously with better surge, better situational awareness, those kinds of things, that over the last 2 years we have improved tremendously.

Mr. DONOVAN. Thank you.

Ms. MCSALLY. Thanks.

The Chair is now going to recognize myself for a second round here. Just a couple of our Members, myself, and Mr. Langevin have a few follow-up questions.

Mr. Salesses, I am equally as concerned as my colleague here about that cybersecurity is in somebody else’s area of responsibility. Because when it comes to defense support to civil authorities, that is your duty title.

So, if we have got rice bowls and stovepipes even within the Pentagon, I mean, this is a domain. Cyber is just one domain that we might be using the military to support other agencies.

So I think we do need to follow up on that, even if it is not here, on where our shortfalls are. Because if that is not something squarely in your domain, then we are not thinking about that in the DSCA mission. Then we have got to figure out how to break down those stovepipes.

So any further comments on that?

You know, similarly, it is really important—look, I have been in the military. So stovepipes, bureaucracies, lack of nimbleness, turf battles, I mean, this is part of our tribal culture, and it often inhibits our ability to be able to respond quickly to do things well.

Certainly, as we have seen from all of you today, the tight coordination with State, National Guard, and the Federal level is really important in a situation like this.

Even in preparation for this hearing—I mean, one of the reasons we have two panels is because, to my understanding, Mr. Salesses, your office didn't even want to be on a panel with my adjutant general because they are a State person with a Federal person sitting next to them. God forbid. We have a State and a Federal person sitting next to each other on a panel for a hearing on a topic like this.

So that just makes me concerned about, you know, the integration still not being where it needs to be for something that is really important. So I just wonder if you could comment on that.

Mr. SALESSES. Absolutely. Again, it is a National response system. I understand the value of not just the Federal partners, the State partners, the local partners, private industry. I actually sit on the National Advisory committee for FEMA, and there is a cross-section of State, local, Federal, private, volunteer organizations.

I have great appreciation for the fact that we need to coordinate and integrate well, and I spend a lot of time doing that. This past Wednesday I was in Minneapolis speaking to all the new State emergency managers. Bryan Koon is the president of NEMA, National Emergency Managers Association, is a good friend and somebody I spent a lot of time with.

In fact, Bob and I in March, along with Don Boyce from HHS, were on a panel. We spent a lot of time trying to educate and inform and learn from those at the State and local level and at private industry and how they can help. A couple weeks ago I had the president of the International Association for Emergency Managers in my office at the Pentagon.

Because, as you look at the municipalities and the major cities, their emergency management community is different than the State emergency NEMA. So it is the ability to bridge all that together and to take the opportunity to explain what the Defense Department can do greatly, more than just our military capabilities.

I can't overemphasize our ability to bring other capabilities to bear on these kinds of events. It is an education. It is a training. It is a planning. We have done a lot to integrate planning.

The Department invested heavily in the Joint Force Headquarters—NCR, which is at the State level, and working on an initiative with Secretary Panetta, Secretary Hagel, and now Secretary Carter, the Complex Catastrophe Initiative. We focused on integrative planning.

DOD is unique because of the Joint Force Headquarters—State. We have folks at the State level. We have folks at the regional level. We have folks at the Federal level with NORTHCOM and PACOM. So the ability to integrate that kind of planning is very unique, and we have done those kinds of things.

Ms. MCSALLY. Great. Thanks. I mean, I appreciate that perspective. I am just trying to wrap up here quickly.

Just one final quick question is—you know, one of the greatest abilities we need in a disaster is situational awareness using surveillance capabilities, and manned and unmanned aircraft can help with that. I know there has been some challenges in the past domestically with the use of unmanned aircraft because of the FAA restrictions.

Where are we on that right now? If we had a disaster, are there quick emergency authorities so that we could use the unmanned aircraft to be able to provide that situational awareness where we currently can't because of the FAA restrictions?

Mr. SALESSES. As you may or may not know, we did UASs in the fire season last year in California. But as we spoke about the DSCA EXORD, we also have a military capability, manned capability, available immediately to do the kind of wide-area awareness that is needed in these kinds of disasters.

We also have NGA, the National Geospatial Intelligence Agency, which has incredible capability and uses commercial satellites and is able to do the kinds of things that we need in that area.

Ms. MCSALLY. But do we have procedures in place? I mean, it is very restrictive right now as to where drones can fly. So do we have procedures in place to break glass and allow them to provide that unique capability?

Mr. SALESSES. We actually published domestic use of UAS guidelines. It talks specifically about how UASs can be used in DSCA events. I would be glad to share that with you and your staff.

Ms. MCSALLY. Great. Thank you.

So my understanding is Mr. Langevin now has more questions.

Mr. LANGEVIN. Sure. Thank you, Madam Chair.

Again to our panel, thank you for your testimony today.

I guess I will go back to this and just work this through. You know, maybe it is because cyber—and, actually, use of cyber tools in an attack that would cause physical damage thankfully hasn't happened to any significant degree here in the United States. It is kind of unchartered territory.

But, obviously, anticipating things ahead of time is essential because I think it is just a matter of when and not if something like that could happen, as we have seen on a number of cases in other places around the world where these things have happened.

But I would like to say, you know, if you are a State EMA director, you know, you are used to dealing with, whether it is FEMA or NORTHCOM, who then do they turn to in a related cyber event like this where it may have multiple interactions, if you will?

You may have physical damage to recover from, say, a turbine or if a generator goes down, but then you also have to ensure that the adversaries are not still on your network. So, therefore, who do you recommend that a State EMA director would turn to?

Mr. FENTON. So State emergency management I think has two different avenues to go on this. One that affects is us, you know, the consequences. With regard to the threat, they are coordinating through DHS' Office of National Preparedness Protection.

Specifically the NCIC, there is the cyber center within DHS that coordinates the State emergency management, and also then the FBI obviously would be involved in that. Those are the two. They coordinate with the rest of the cyber centers within the Federal Government to then coordinate and communicate those threats.

Mr. LANGEVIN. So, obviously, that goes to the fact that they would go to people they have dealt with in the past. But I don't know that—it seems like it hasn't yet been institutionalized that an EMA director would know who to go to in the event of a cyber-related incident.

Let me just ask this. Again, when things move very quickly, what, if any, of this has been exercised? How is the DOD adjusting its annual exercise program to account for this type of a new eventuality?

Mr. SALESSES. Again, Congressman, not an expert in the cyber area. But we do have, obviously, CYBERCOM and the whole office and the OSD staff that deals with cyber.

But right now, for example, there is an exercise on-going called CYBERCOM and NSA—CYBERCOM, rather—it is called—Cyber Guard is the exercise. Cyber Command and the National Guard Bureau are running an exercise for the next 2 weeks focused on cyber, specifically how to deal with the cyber threat, the cyber intrusion, and those kinds of things.

It doesn't focus on the consequences of an event where infrastructure may be impacted, but does focus on the issue that you keep raising, is: How do State and local connect at the Federal level to get support from the Federal Government?

As Bob mentioned, it would be through DHS and the NCIC and DOJ. Then, if support was needed from DOD, DOD would make that support available through CYBERCOM and DHS and DOJ, in particular, FBI. But there is an on-going exercise. I would be glad to provide that information to your staff.

Mr. KIRSCHBAUM. Mr. Langevin, this is an excellent example of what we have been talking about, the need to really continue the diligence on the planning.

As Cyber Command gets the cyber mission teams established and going, the command and control for them, the structure, this is the kind of thing throughout the Department that they need to determine—who does what, who is supposed to do what—so, when that connection happens during a major disaster, when forces are already deployed in the field to assist civil authorities, when requests come to them, they know who to send them to and when and how that goes.

So that is a lot of internal duties to work on, and then that external piece is going to have to be a major priority.

Mr. LANGEVIN. Sure. Sure. Well, that is part of what we are going to ensure in our oversight responsibility, is to make sure that we are working these things through.

I sit on the Armed Services Committee and am the Ranking Member that oversees Cyber Command and NSA. I am going to be sure that we press these issues there as well to work out these things sooner rather than later so that, in the event that something happens, the questions have already been answered.

Thank you to our panel.

Madam Chair, I yield back.

Ms. MCSALLY. Thank you.

I want to thank these witnesses for their valuable testimony on our first panel. This panel is dismissed.

The clerk will now prepare the witness table for our second panel.

Ms. MCSALLY. All right. I would like to welcome our second panel to today's hearing. Thank you all for participating.

Major General Michael McGuire is Arizona's adjutant general and currently serves as the director of the Arizona Department of

Emergency and Military Affairs. In this capacity, he is responsible for managing the day-to-day activity of Arizona's Army and Air National Guard's joint programs and the Division of Emergency Management.

Mr. James Gianato serves as the homeland security advisor for the State of West Virginia, a position he has held since December 2010. In this capacity, he also serves as the chairman of the State Emergency Response Commission.

Mr. Gianato has 35 years of experience in emergency response, which includes service as the director of 9-1-1 and emergency services in McDowell County and active membership in the Kimball Volunteer Fire Department. Mr. Gianato is testifying on behalf of the National Emergency Management Association.

I now recognize the gentleman from Rhode Island, Mr. Langevin, to introduce our final witness.

Mr. LANGEVIN. Thank you, Madam Chair.

Welcome to our panel. I, in particular, just want to thank you for the opportunity to say a few words of introduction about Mr. Gaynor from my home State of Rhode Island.

Pete Gaynor has spent his career in public service, first as a Marine, where he rose to the rank of colonel, and more recently as an emergency manager. From 2008 to 2014, Pete served as the director of the City of Providence's Emergency Management Agency, where he was widely lauded for professionalizing its operations.

Last December Pete was appointed by Governor Gina Raimondo as the head of the Rhode Island Emergency Management Agency, where he immediately helped lead the response to the January blizzard and the many blizzards and significant storms after that, as a matter of fact. I also want to add that Pete is also an alumnus of our Rhode Island College. Good to see a fellow alum here.

I welcome you, Mr. Gaynor, as well as our panel, and I look forward to hearing your testimony as well as our other witnesses.

With that, I yield back.

Ms. MCSALLY. Thank you.

The witnesses' full written statements will appear in the record. The Chair now recognizes General McGuire for 5 minutes.

**STATEMENT OF MAJOR GENERAL MICHAEL T. MCGUIRE, THE
ADJUTANT GENERAL, DEPARTMENT OF EMERGENCY AND
MILITARY AFFAIRS, STATE OF ARIZONA**

General MCGUIRE. Good morning, Madam Chairman. Thank you for the opportunity.

Distinguished Members of the panel, I appreciate the opportunity to appear before you today on behalf of Governor Ducey, serving in his cabinet as the director of emergency management and military affairs, serving also concurrently as the adjutant general for the nearly 8,200 soldiers and airmen of the Arizona Army and Air National Guard.

I want to take the opportunity to quickly just talk through a couple of things. I did provide a visual aid up there today that I will refer to at least once when we talk about why the Guard is the first choice and put it in military parlance for the Chairman's reference, as she talked about being forward-deployed and rice bowls and stovepipes that exist in the military.

Then I will take the last couple minutes of my time to try to reference a couple of the questions about cyber and some of the questions that have come up from the other Members in the name of time and then, hopefully, get your questions.

On the historic perspective, I think it is important for us to understand that the National Guard has been at this mission for 379 years, dating back to the Pequot wars of 1634 and the appointing of the first adjutant general in the Massachusetts Bay Colony in 1636.

That is important to understand. You know, there is a lot of confusion about why the Guard, what the existence of the Guard is about, and, truly, it is the father of the modern United States Army. As we have evolved in the Guard, we have been involved and will continue to be involved in every major conflict since 1634 to the current overseas contingency operations.

We look at the Guard very clearly as an organization that has to train for what we believe to be the most demanding and complex mission, but can instantly pivot to respond to support the States and the citizens under the command of the Governor at a moment's notice. So, when you hear people say that the Guard is the first choice, it is the first choice because of that slide.

Now, that slide doesn't have every single armory installation around the country. But you can see every one of those stars represents an area where there is a prepositioning of National Guard equipment and personnel that can be called at a moment's notice to meet an emergent response in a State and local community.

In a military sense, the Guard is prepositioned. They are forward-deployed. In Arizona, for example, members of the Arizona National Guard hail from all 15 counties in the State.

In my role as State emergency manager, I understand better than anyone that those 15 county emergency managers work with their local incident management system and their first responders, police and fire, and that every single emergency is a critical action and that, while we train for the most complex mission, the most emergent really will be supporting our citizens.

So that is why you hear that the Guard is the first choice. They are just out there. They are out there in every community, and they are able to respond. They have these relationships with local community responders, as well as bringing their civilian skills as citizen soldiers and airmen, to the fight. Carpentry, plumbing, legal, contracting, whatever it might be, the Guard is expertly designed to be able to do both missions.

The final thing is that, because we are prepositioned, we have a huge base of tactical knowledge about at-risk areas, understanding the local geography and lay of the land, areas where flooding is most prone to occur, areas where we have had issues with power grids and those types of things in the past. So that is really why the Guard is critical.

As a preferred choice, the Guard has statutory reasons, as has been mentioned, under Posse Comitatus that makes it very clear under Title 10 we are very restricted when Federalized.

But operating under the Governor's authority under Title 32, where Federal resources are provided, or State Active-Duty where

State resources are provided, the Guard provides a huge swing capability that we cannot tap into in our Title 10 forces.

Just some quick closing comments on two issues that were touched on here, the CBRN enterprise. As we get ready in the Armed Services Committee for the mark-ups, it is important for all the Members to understand that 80 percent of the CBRN capacity is currently resident in the National Guard Army or Air. So any indiscriminate cuts to force structure need to be reviewed by anybody that is working on the Homeland Security side to make sure that that CBRN response capacity is not affected.

When we look at future missions—cyber, RPA, firefighters en masse—the use of Title 32 funding and the ability to quickly respond is something that is yet to be clearly defined, as we saw from the earlier testimony, first that I have heard that Cyber Command will be taking the lead in the event of an emergency response in the cyber domain in the States.

So I am more than happy to answer your questions, and I yield the final 17 seconds of my time to my colleagues from Rhode Island and West Virginia.

[The prepared statement of General McGuire follows:]

PREPARED STATEMENT OF MICHAEL T. MCGUIRE

JUNE 10, 2015

INTRODUCTION¹

As the number of overseas deployments of U.S. forces continues to decline, the focus of military planners has begun to shift to domestic operations to include disaster preparedness, emergency response, and homeland security. But the military departments' renewed focus on domestic operations merely highlights a mission that the National Guard has capably executed for the past 379 years. The National Guard has performed this critical domestic response duty while simultaneously engaging in combat operations around the globe. From the Pequot War in 1634 to the current Overseas Contingency Operations, National Guard troops have been involved in every major military campaign in this Nation's history. Thus, the National Guard is uniquely trained and situated as the first line of support to the Nation's communities if first responders and local resources are overwhelmed.²

The National Guard is the modern-day militia, the formation of which predates the founding of our country. The Massachusetts National Guard traces its lineage to the first regiments established by the General Court of the Massachusetts Bay Colony in 1636. Each of the States, the U.S. territories and the District of Columbia (referred to herein as "the States") have equally rich histories. Militia units patterned after the English militia system were common throughout the colonies and played a central role in our Nation's fight for independence. They also assured the security of new States as the Nation expanded westward. Because of the critical militia role in the birth and expansion of our Nation, the right of the States to raise, maintain, and employ their own military forces (known since 1824 as the "National Guard") is guaranteed by the U.S. Constitution and the constitutions and statutes of the several States.³

¹Maj Gen McGuire submits this written testimony and corresponding oral testimony in his State capacity as the director of the Arizona Department of Emergency and Military Affairs and on behalf of the Governor of the State of Arizona. Neither the written testimony nor Maj Gen McGuire's oral statements to the subcommittee have been reviewed by the Department of Defense.

²See ADP 3–28, Defense Support of Civil Authorities, July 2012 ("Most domestic disasters require no Federal military assistance. State and Federal emergency management agencies receive the military assistance needed from the National Guard in State active duty or Title 32 status.")

³The majority of this paragraph taken by permission from Major General (Retired) Timothy J. Lowenberg, *The Role of the National Guard in National Defense and Homeland Security*, <http://www.ngaus.org/sites/default/files/pdf/primer%20fin.pdf> (last visited June 6, 2015).

Consistent with the citizen-soldier model of the early militias, the present-day National Guard is embedded in the local communities. The Soldiers and Airmen that comprise the National Guard are members of the communities—policemen and firemen, small business owners, carpenters, civil engineers, plumbers, and mechanics. This fact provides intangible benefits. First, response time during an emergency is much shorter for National Guard troops than their Federal counterparts because the majority of Guardsmen are already located in and around the affected area. Second, relationships already exist between Guardsmen and local officials, first responders and residents because, again, the Guardsmen live and work in the community. Third, affected communities benefit from a response force that can bring not only military capabilities but also civilian skills such as carpentry, mechanical, civil engineering, and business negotiation. And fourth, National Guard troops have hometown familiarity with the geographic layout of the affected community, combined with an understanding of the most at-risk areas. Put another way, with nearly 3,300 installations in 2,700 communities around the country, the National Guard is America’s “forward-deployed” homeland response force.⁴ Accordingly, any proposal to impose “proportionate” cuts on the various military branches must consider the effect an arbitrary cut would have on this critical homeland response force.

THE NATIONAL GUARD AS THE PREFERRED DOMESTIC RESPONSE FORCE

Disasters typically begin and end locally, and most are managed at the local level. It is therefore the goal of any emergency response plan to be able to resolve an event at the lowest possible level of jurisdiction—our cities and counties. Local first responders are the first line of defense during any emergency or disaster that strikes our homeland. The Nation’s local first responders are supported by the “Whole Community,” a concept that recognizes preparing for and responding to emergencies is the collective responsibility of our citizens, local governments, faith-based and non-profit organizations, and the private sector in conjunction with State, Tribal, and Federal government agencies. The Whole Community concept is essential to the National Preparedness System. Developed in response to Presidential Policy Directive 8: National Preparedness, the National Preparedness System is based upon and driven by the National Preparedness Goal—“A secure and resilient Nation with the capabilities required across the whole community to prevent, protect against, mitigate, respond to, and recover from the threats and hazards that pose the greatest risk.” The existing National Incident Management System (NIMS) provides the foundation on which the National Preparedness System is built, and has developed over time to guide the Whole Community in the response and management of a disaster or emergency, from local first responders and across all levels of government, while recognizing the sovereignty and responsibility of State.

The National Preparedness System is broken into five preparedness frameworks: Prevention, Protection, Mitigation, Response, and Disaster Recovery. The National Response Framework provides the structure to enable the Whole Community response. Local first responders address nearly 85% of the disasters and emergencies that impact our communities on daily basis.⁵ Occasionally, disasters and emergencies occur that exceed the resources and abilities of our local first responders; and in those rare cases where our first responders are not sufficiently able to respond and recover from a disaster or emergency the response escalates to higher levels of government through the National Response Framework—first the State, then multiple States, and finally Federal. This scalability is the essential strength of the National Incident Management System, and enables the Whole Community to meet and manage incidents involving all threats and hazards—regardless of cause, size, location, or complexity. Although the scalability includes the ability to integrate national resources, the National Incident Management System and National Response Framework respect the sovereignty of the States and recognize that command and control of the disaster or emergency response remains with the State(s) or lowest level of jurisdiction.

⁴ See Exhibit 1.

⁵ Lt Col Mike Domingue, New Hampshire National Guard, “National Guard Civil Support,” *National States Geographic Information Council*, http://www.nsgic.org/public_resources/Sun-Domingue-National-Guard-Briefing-for-NSGIC.pdf (last visited June 6, 2015).

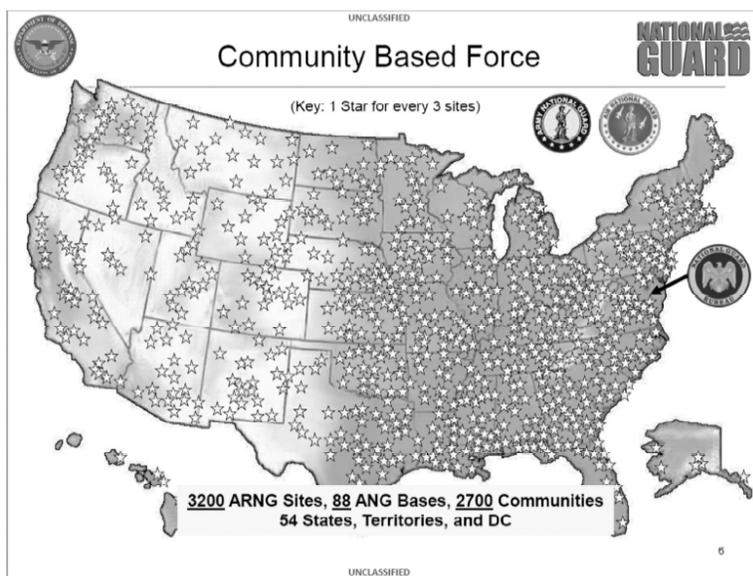


Exhibit 1, the National Guard is a Community Based Force

As an event grows in size or complexity, the National Response Framework guides the incorporation of additional resources from the Whole Community to respond, from city to county and then to the State level. At the State level, the incident is managed through the State's emergency manager and no matter how large or small the incident becomes, the State remains in control of all response assets, Federal or otherwise. There are three models for the State emergency manager found among the States and territories. A majority of the States and territories, 37, have a stand-alone emergency manager, five States assign the Adjutant General of the National Guard the dual role of State emergency manager, and 12 States assign the Adjutant General the roles of State emergency manager and homeland security advisor.⁶ The Governor ultimately exercises command and control of the response to an emergency or disaster through his or her emergency manager. As a State institution, one of the tools available to the Governor is his or her National Guard, and the Governor can task the National Guard to provide Military Support for Civil Authorities (MSCA) missions to help in the response. In addition, the Governor can request assistance from neighboring States through the Emergency Management Assistance Compact (EMAC), which has been ratified by all States and territories.

If the event exceeds the resources and ability of the State to respond, the Governor will then request assistance from the Federal Government through FEMA. It is important to note that the resourcing agent for all Federal resources, including requests for support from the U.S. Department of Defense (DOD) not related to the State's National Guard MSCA mission, is FEMA. Despite the DOD's "immediate response" authority, FEMA manages and assigns requests for Federal assistance to the most capable organization.⁷

Capability is more than force structure: It is the ability to provide the most effective, versatile, scalable support to the local community—the type of support only found in the National Guard. In the 5% of emergencies and disasters that require assistance beyond the resources and capabilities provided by the National Guard, neighboring States, and non-DOD Federal agencies, FEMA will task the DOD to respond.⁸ The request for DOD resources, however, does not transfer command and control of the incident to the DOD. Instead, in a properly-executed response to an

⁶See Exhibit 2.

⁷DOD Directive 3025.18, also known as the "Immediate Response Authority," grants Federal military commanders and/or responsible DOD civilian officials the ability to act from a request by a competent civilian authority to save lives, prevent human suffering, or mitigate great property damage within the United States.

⁸Domingue.

emergency or disaster, it brings those DOD resources to the incident and works at the direction of the Governor and State emergency manager through a Dual-Status Commander as part of the National Response Framework. Despite the additional resources that the DOD brings, its support to civil authorities is slow and mission assignment cumbersome because providing those resources requires Secretary of Defense authorization. The National Guard, because it is locally based and responsive to the State, is the first line of support to your constituents' first responders once local resources are overwhelmed. Beyond being the first choice, it is also most appropriate choice based on applicable legal authorities.

THE ROLE OF THE NATIONAL GUARD IN DSCA OPERATIONS

National Guard (NG) units, under the control of their respective State Governor and their "The Adjutants General" (TAGs), have traditionally been the primary military responders in domestic operations and emergencies. The use of Federal forces to support State and local governments was, and remains, the exception rather than the rule. Federal forces are generally used only after State resources are exhausted or overwhelmed and Federal assistance has been requested by State officials.⁹

As detailed above, management of natural disasters and similar incidents is based upon the principal of "tiered response." Pursuant to that concept, response and support to affected areas begin at the lowest level of Government and escalate to the next tier based upon requirements. Each successive level of Government maintains enough capability to carry out the responsibilities imposed upon it by law. Each has some reserve capability to address exceptional circumstances that occur within its jurisdiction. When an incident overwhelms the capacity of any level of Government, it calls upon the next higher level of Government for support. The key players in the tiered response framework are local, Tribal, State, and Federal governments.¹⁰

To understand the role of the National Guard in National defense and homeland security, one must understand the Constitutional and statutory provisions governing use of military force by the Federal and State governments. Governors and Federal officials must also have a clear understanding of current and evolving National defense and homeland security strategies and the organizational structure, funding sources, and operational capabilities of today's Army and Air National Guard.¹¹

Several statutes govern the use of military forces in response to a natural or man-made disaster. The first is the *Stafford Act*.¹² The *Stafford Act* is the primary legal authority for Federal emergency and disaster assistance to State and local governments. It authorizes the President to issue major disaster declarations and authorizes Federal agencies to provide assistance to States overwhelmed by disasters. Most of the *Stafford Act* provisions come into play after an emergency request from a State's Governor. The *Stafford Act* also sets the guidelines for reimbursements from Federal funds to Federal agencies and States. As is the case with many of the legal authorities governing disaster relief, the *Stafford Act* "is based on the premise that most incidents begin and end locally and are managed on a daily basis at the lowest possible geographical, organizational, and jurisdictional level."¹³

⁹DR Dave Sherry and LCDR Robert Pirone, *Domestic Operational Law Handbook* (CLAMO, The Judge Advocate General's Legal Center and School, U.S. Army, Charlottesville, Virginia, 2013), 3.

¹⁰ADP 3-28, 3.

¹¹Lowenberg, 1.

¹²The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended by the *Post-Katrina Emergency Management Reform Act of 2006*, Pub. L. No. 109-295 (2007), and the *Sandy Recovery Improvement Act of 2013*, Pub. L. No. 113-2 (2013).

¹³Sherry and Pirone, 25.

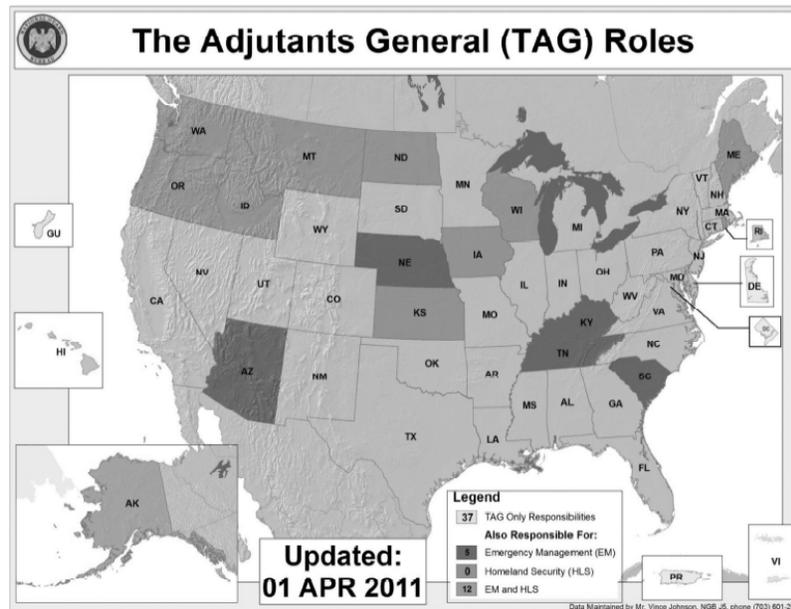


Exhibit 2, the Varied Emergency Management Roles of the Adjutant Generals

One of the oldest and most restrictive of the laws applicable to Defense Support to Civilian Authorities is the *Posse Comitatus Act (PCA)*.¹⁴ The *PCA* prohibits the use of Federal troops for law enforcement purposes, with some limited exceptions. But while the *PCA* restricts the use of Federal troops in law enforcement roles, such as traffic control points or patrolling in the aftermath of a disaster, National Guard troops serving in their State capacities are exempt from the restrictions of the *PCA*. The Federal versus State characteristics of the National Guard are discussed in greater detail below.

One of the few exceptions to the *PCA*'s prohibition on use of Federal troops for law enforcement purposes is the *Insurrection Act*,¹⁵ which permits the President to use the armed forces to enforce the law when: (1) There is an insurrection within a State, and the State legislature (or Governor if the legislature cannot be convened) requests assistance from the President; (2) a rebellion makes it impracticable to enforce the Federal law through ordinary judicial proceedings; or (3) an insurrection or domestic violence opposes or obstructs Federal law, or so hinders the enforcement of Federal or State laws that residents of that State are deprived of their Constitutional rights and the State is unable or unwilling to protect these rights.¹⁶

As a unique State-based military force (albeit largely funded by the Federal Government and trained in accordance with Federal standards), the National Guard is the only military force shared by the States and the Federal Government. It is a ready operational force accessible to the States for both State and combined State and Federal purposes and to the Federal Government for Federal purposes.¹⁷

State Active Duty

States are free to employ their National Guard forces under State control for State purposes and at State expense as provided in the State's Constitution and statutes. In doing so, Governors, as commanders-in-chief, can directly access and utilize the Guard's Federally-assigned aircraft, vehicles, and other equipment so long as the Federal Government is reimbursed for the use of fungible equipment and supplies such as fuel, food stocks, etc. This is the authority under which Governors activate and deploy National Guard forces in response to floods, earthquakes,

¹⁴ 18 U.S.C. § 1385.

¹⁵ 10 U.S.C. §§ 331–334.

¹⁶ Sherry and Pirone, 82 (citing 10 U.S.C. §§ 331–333).

¹⁷ This paragraph taken in its entirety by permission from Lowenberg, 1.

wild fires and other natural disasters. It is also the authority under which Governors deploy National Guard forces in response to human-caused emergencies such as riots (e.g., World Trade Organization meeting, Seattle, 1999), civil unrest (e.g., World Bank meeting, District of Columbia, 2000) and terrorist attacks (e.g., World Trade Center attacks, New York City, Washington DC and Pennsylvania, September 11, 2001). Unlike active-duty and Federal military reserve forces such as the Army and Air Force Reserves, all National Guard personnel and equipment (or so much thereof as are not already “Federalized”) are directly accessible to the Governor in State or local emergencies and as otherwise provided by State law. Such service is performed in accordance with State law; National Guard members performing duty at the call of the Governor are therefore said to be in “State Active-Duty status”, meaning, among other things, that command and control rests solely with the Governor and the State or territorial government. Execution of State active-duty missions is accomplished by delegation of authority from the Governor to the adjutant general.¹⁸

Title 32 Duty

The Militia Clause found in Article 1, Section 8 of the U.S. Constitution also authorizes use of the National Guard under continuing State control but in the service of the Federal Government to “execute the laws of the Union, suppress insurrections and repel invasions”. These provisions are unique to the National Guard and are the authority by which Governors answered the President’s request for deployment of National Guard forces to our Nation’s airports following the terrorist attacks of September 11, 2001. State-controlled National Guard forces were deployed by Governors at Federal expense and in compliance with prescribed Federal operational standards to assure aerial port security and compliance with Federal inter-State commerce and aviation laws. Unlike subsequent border security missions (described below), National Guard forces mobilized within hours and promptly deployed to airports where they remained under State control for the duration of the 6-month airport security mission. These arrangements preserved State-level management of National Guard personnel and assured maximum flexibility for responding to other unforeseen or emerging State and Federal requirements.¹⁹

These and similar domestic military missions have been performed by the National Guard at various times since September 11, 2001 under the authority of Title 32, section 502(f) of the United States Code (USC); National Guard members performing such duty are therefore commonly said to be serving in “Title 32 duty status”, meaning, among other things, that command and control remains with the Governor and the State or territorial government even though the Guard forces are being employed “in the service of the United States” for a primary Federal purpose or a shared State-Federal purpose.²⁰

Notwithstanding clear Constitutional authority for these arrangements (State control of Guard operations having a primary Federal purpose or a shared State-Federal purpose), DOD officials frequently questioned the Guard’s statutory authority for Title 32 domestic operations. Statutory authority for National Guard training at Federal expense is clear. The argument, however, was that 32 USC 502(f), which authorizes use of the National Guard at Federal expense but under continuing State control for “training or other duty” is somehow intended to authorize training only, as opposed to duties such as military support to civil authorities. Some of these DOD officials therefore questioned President Bush’s request for National Guard Title 32 operational assistance at the Nation’s airports in 2001–2002, subsequent support for Federal border security agencies and other periodic National Guard assistance to Federal and State civil authorities. Enactment of 32 USC 901 et. seq., resolved much of this claimed ambiguity by authorizing the Secretary of Defense to “provide funds to a Governor to employ National Guard units or members to conduct homeland defense activities that the Secretary determines to be necessary and appropriate.” See 32 USC 902.²¹

The statute defines “homeland defense activities” as activities “undertaken for the military protection of the territory or domestic population of the United States, or of the infrastructure or other assets of the United States determined by the Secretary of Defense as being critical to National security, from a threat or aggression against the United States.” (32 USC 901(1)). The Secretary of Defense may request domestic use of National Guard forces and fund such operations (as was done with the Governors’ support for airport security in 2001–2002). “A Governor of a State

¹⁸ Ibid. 2.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

may [also] request funding assistance for the homeland defense activities of the National Guard of [their] State.” (32 USC 906). 32 USC 901 et seq. explicitly authorizes use of the National Guard under continuing State control but at Federal expense, when approved by the Secretary of Defense, for a wide variety of operations, including, when appropriate, protection of oil refineries, nuclear power plants and other critical infrastructure and responding to catastrophic natural disasters and adaptive human threats.²²

Title 10 Duty

The War Powers Clause of the U.S. Constitution grants the Federal Government plenary authority to raise military forces and to employ such forces, including mobilized (sometimes referred to as “Federalized”) National Guard units, under Federal control and at Federal expense for National defense purposes. This is the authority under which the Federal Government mobilizes and deploys National Guard units and personnel for combat, combat support, and combat service support missions at home and throughout the world. Such service is performed under the authority of Title 10 USC; service members performing such duty are therefore commonly said to be in “Title 10 duty status”, meaning, among other things, that command and control rests solely with the President and the Federal Government.²³

Since the Army, Navy, Air Force, Marine, and Coast Guard Reserves, like their active-duty counterparts, are Federal military forces wholly controlled by the Federal Government, they are not directly accessible by Governors and duty performed by such personnel is always in “Title 10 status”. When performed within the United States, Title 10 duty (including Title 10 duty performed by National Guard personnel) is subject to a number of legal restrictions, including, as stated above, provisions of the Posse Comitatus Act (18 U.S.C. 1385), which severely limit the use of Federal military forces in support of domestic law enforcement operations.²⁴

When employed at home or abroad in Title 10 status, National Guard forces are stripped of all State control and become indistinguishable elements of the Federal military force. This was the authority used by the Federal Government to mobilize and deploy National Guard forces to augment Federal law enforcement agencies at the Canadian and Mexican borders in the spring and summer of 2002. In stark contrast to the speed and efficiency with which Governors deployed National Guard Soldiers and Airmen to airports (more than 450 airports were secured within a matter of hours or days), it took more than 6 months for the DOD to agree to a Memorandum of Understanding with the U.S. Border Patrol and increased security at our Nation’s borders was delayed until these negotiations and legal arrangements had been finalized.²⁵

Duty Statuses Summarized

Federal and State constitutions and statutes provide the primary authority for use of military force by the Federal and State governments. These provisions, in-so-far as they apply to the National Guard, reflect the Constitutional balance of power between the sovereign States and the central Federal Government. National Guard forces are unique among all other military components in that they may be used in one of three legally distinct ways:

- (1) by the Governor for a State purpose authorized by State law (State Active Duty); or
- (2) by the Governor, with the concurrence of the President or the President’s designee (e.g., the Secretary of Defense), for shared State/Federal purposes or for a primary Federal purpose (Title 32 Duty); or
- (3) by the President for a Federal purpose authorized by Federal law (Title 10 duty).²⁶

When in State Active-Duty or Title 32 status, National Guard forces remain under the operational, tactical, and administrative control of the Governor and the State government. This authority is reposed in the Governor as commander-in-chief and executed by the adjutant general, as the State’s senior military commander. By contrast, Title 10 military forces (active-duty, reserve, and “Federalized” National Guard forces) are under the exclusive control of the President and the Federal Government and are beyond the access, control, or supervision of the Governor even when operating within his or her State.²⁷

²² Ibid.

²³ Ibid. 3.

²⁴ Ibid.

²⁵ Ibid.

²⁶ See Exhibit 3.

²⁷ Ibid.

THE DUAL-STATUS COMMANDER CONCEPT

In responding to a complex catastrophe, there is a potential for confusion in the chain of command between the response initiated at the State-level National Guard forces, and the Federal active-duty and reserve forces provided by the DOD for DSCA operations. In reviewing the responses to modern catastrophes, the first lesson learned to preserve the respect for civil authorities is establishing a clear chain of command. Second, coordination and operational unity of effort between the State and Federal efforts must be maintained. Finally, imposing multiple voices from different uniformed services on stressed local, State, and Federal civilian agencies must be avoided.²⁸

Table 2-1. Summary of types of duty status for Army forces

Duty status of Army forces:	State active duty (Component: Army National Guard in state service)	Title 32 (Component: Army National Guard in state service)	Title 10 (Components: Regular Army, activated Army Reserve, and Army National Guard in federal service)
Command:	Governor	Governor	President
Where missions are performed:	Within home state or territory, or in neighboring state according to emergency management assistance compact or state-to-state memorandum of agreement	Within home state or territory, or in neighboring state according to emergency management assistance compact or state-to-state memorandum of agreement	Worldwide
Funding:	State government	Federal government, administered by the state	Federal government
Types of missions:	Assigned by governor, under state law—missions include law enforcement and emergency (incident) response	Assigned by Department of Defense—missions include service for annual training, drills, disaster and law enforcement missions, and other federal military requirements. Title 32 status for incident response requires a disaster or emergency declaration by the President.	Assigned by Department of Defense—missions include worldwide training and operations, as assigned by joint force commander
Discipline:	State military code	State military code	Uniform Code of Military Justice
Support for civilian law enforcement:	Yes, direct and indirect support as authorized by the supported governor	Yes, direct and indirect support as authorized by the supported governor	Yes, but strictly limited to indirect support consistent with the Posse Comitatus Act, standing execute orders, and Department of Defense directives and instructions
Authority for determining pay:	State law	Department of Defense Publication 7000.14-R	Department of Defense Publication 7000.14-R
Authority for travel, lodging, and benefits:	State law	Department of Defense travel regulations and public law. See http://www.defensetravel.dod.mil/site/travelreq.cfm	Department of Defense travel regulations and public law. See http://www.defensetravel.dod.mil/site/travelreq.cfm

The 2012 National Defense Authorization Act, found in Public Law 112–81, fused earlier legislative efforts from both the Council of Governors and the DOD to enable individual States and the DOD to coordinate their efforts through a single commander. The Dual-Status Commander concept involves a command arrangement that legally authorizes one military officer, usually a National Guard officer, to assume simultaneous but mutually exclusive command authority over both National Guard forces and Title 10 Federal military forces. While State and Federal military forces maintain separate and distinct chains of command, the Dual-Status Commander is capable of leading all military forces and directs their response efforts. This achieves a level of unity of effort that was unachievable or difficult prior to implementation of this construct. The unique command architecture of the Dual-

²⁸ Ryan Burke and Sue McNeil, *Toward a Unified Military Response: Hurricane Sandy and the Dual-Status Commander* (Strategic Studies Initiative, The U.S. Army War College Press, Carlisle Barracks, Pennsylvania, April 2015), 53–78.

Status Commander respects the various Constitutional and legal considerations governing the use of military forces in a domestic capacity. It further alleviates the tension experienced in past responses between States and the Federal Government during complex disaster mitigation.²⁹

Ultimately, nobody knows a State better than its Governor; the individual elected by the people and accountable to them during their time of greatest need. The Governor, working with his or her State adjutant general, will continue to lead disaster response and recovery efforts within their State. A dual-status commander allows them to do it better by ensuring all types of DOD support work together within the Governor's intent. It allows the President and Secretary of Defense to bring the weight of unique DOD capabilities and National capacity to bear when our citizens most need it, and when the interests of the entire country are at stake. And, it allows U.S. Northern Command to achieve its vision of working with partners to outpace threats and support the American people in their times of greatest need.³⁰

Dual-Status Commanders have successfully been employed for multiple planned events since 2004 and multiple unplanned wildfires and hurricanes. Most notably, Dual-Status Commanders were used during the G8 Summit at Sea Island, GA in 2004; at the Republican and Democratic National Conventions in both 2004 and 2008; and the G20 Summit in Pittsburgh, PA in 2009. Dual-Status Commanders were also employed for Hurricane Irene in 2011, the Colorado wildfires in 2012, the Colorado floods of 2013, Tropical Storm Isaac in 2012, and Hurricane Sandy in October of 2012.³¹ The Governor for the State of New Jersey, the Title 10 Commander for US Northern Command, and the Chief of the National Guard Bureau all heralded the successful use of Dual-Status Commanders in the response to Hurricane Sandy.³²

CONSIDERATIONS FOR THE WAY FORWARD

Since the deployment of Dual-Status Commanders to both pre-planned, as well as no-notice/limited-notice incidents, improvements at both the State and Federal levels can be made. Future modifications must preserve the authority of a State Governor to manage incidents in the State and mitigate the risk of failed State and Federal coordination mechanisms.

Difficulties in Receiving 32 USC 502(f) Authority and Resourcing

The DOD receives—and often denies—requests from States for the Secretary of Defense to approve 100% DOD-funded operations under 32 USC 502(f).³³ The current articulated criteria for a 502(f) operation from the DOD are: (1) Effects of event are catastrophic; (2) the event is National in character; and/or (3) requires a significant multi-State National Guard response.³⁴ In April of 2012, The DOD's Reserve Forces Policy Board published its report on New Policies and Clearer Funding Flows for Reserve Component Operations in the homeland. In this report, the Reserve Forces Policy Board discussed the denial of requests for 502(f) funding and recommended that the Office of the Secretary of Defense should collaborate with the National Guard to develop clearer guidelines and criteria.³⁵ This recommendation would provide greater predictability for State leaders regarding the likelihood of approval by the Secretary of Defense for State-requested operations under Section 502(f). Additionally, the Board recommended that the DOD should work with Department of Homeland Security, FEMA, and the Office of Management and Budget to clarify in writing the policy for the reimbursement of the pay of both National Guard and Reserve forces when assigned missions by the Secretary of Defense for purposes of conducting disaster relief operations. Specifically, the dialogue should cover possible revision of 44 CFR 206.8 or the creation of an agreement in writing

²⁹ Schumacher, Ludwig J. "Dual-Status Command for No-Notice Events: Integrating the Military Response to Domestic Disasters." *Homeland Security Affairs* 7, Article 4 (February 2011).

³⁰ Gen. Charles H. Jacoby, Jr., and Gen. Frank J. Grass "Dual-Status, Single Purpose: A Unified Military Response to Hurricane Sandy" <http://www.ang.af.mil/news/story.asp?id=123339975> (last visited June 6, 2015).

³¹ Brig Gen Richard J. Hayes, Jr. "DOD Response Under the *Staff Act*: A Call to Action." (*Joint Forces Quarterly*, Issue 77, 2nd Quarter 2015, St. Louis, Missouri) 84–86.

³² Jacoby and Grass.

³³ Memorandum for the Secretary of Defense from Maj Gen Arnold L. Punaro, USMCR (Ret), Chairman, Reserve Forces Policy Board, Re: Report of Reserve Forces Policy Board on New Policies and Clearer Funding Flows for Reserve Component Operations in the Homeland, April 9, 2012.

³⁴ *Ibid.*

³⁵ *Ibid.*

between DOD and FEMA regarding reimbursement for the military pay of National Guard personnel employed for disaster operations under 32 USC 502(f).³⁶

Title 10 Awareness of the Dual-Status Commander Construct

Of the noted areas needing improvement, perhaps none is more important than DSCA education for senior military leaders.³⁷ While there are many subject-matter experts in all things related to defense support of civil authorities, there appears to be a critical gap in DSCA knowledge among some senior military commanders. As evidenced by the failure to follow mission assignment processes and the notable confusion over the role and authority of the dual-status commander. It appears that some senior leaders, often with decision-making authority, lack the required knowledge to ensure their decisions fall within established legal, financial, and doctrinal barriers of DSCA operations. The critical triad of DSCA considerations—the legal, financial, and doctrinal guidelines—were abused during the Sandy response in New York, in many cases due to a lack of DSCA knowledge among commanders and their support staffs.³⁸

Some of the Title 10 active-duty officers who participated in Hurricane Sandy suggested overturning the National Response Framework and that prepositioning Title 10 forces was the preferred strategy, rather than activating National Guard troops through Emergency Management Assistance Compact and other sourcing mechanisms.³⁹ Aggressive posturing of Title 10 forces risks complicating the incident response framework on multiple levels, including command-and-control confusion and functional interoperability. A Governor should be able to enlist the aid of a local Title 10 engineer unit in a flood, but even the unmatched capabilities found in active-duty units must be applied in a coordinated fashion.

After-Action Reports indicate that U.S. Army Corps of Engineers commanders were equally unfamiliar with the dual-status commander construct.⁴⁰ In this case, Title 10 forces attached to Task Force Pump and in support of the U.S. Army Corps of Engineers as the lead Federal agency for Emergency Support Function-3 were assigned missions beyond the scope of any pre-approved mission assignments for Title 10 forces. Reports suggest that the U.S. Army Corps of Engineers personnel were unaware of certain Title 10 restrictions for Federal military forces and did not have an effective process in place to facilitate coordination with the dual-status commander.⁴¹

Additionally, the Marine Corps' arrival on Staten Island resulted from a series of conversations outside of the established chain of command and perhaps without consideration for normal Title 10 request for assistance procedures.⁴² A number of After-Action Reports support the claim that the commandant of the Marine Corps, through the II Marine Expeditionary Force commanding general directed the 26th Marine Expeditionary Unit (MEU) commander to deploy his unit to the USS Wasp off the coast of New York. The guidance from the commandant instructed the MEU to: "Get to New York City, go ashore, do good, and relieve the suffering that is occurring."⁴³ As a result, without a mission assignment or notifying the dual-status commander, Marines carried out their orders and began support efforts on November 4, 2012. Except for justifying the Marine Corps' arrival on Staten Island as Immediate Response Authority, the legal basis for the Marines' activity on Staten Island during Hurricane Sandy remains questionable and ambiguous.⁴⁴

Impacts of Sequestration and a Reduction in Force on the CBRN Response

The Chemical, Biological, Radiological, and Nuclear (CBRN) Response Enterprise is composed of both Title 10 Active-Duty and Title 32 National Guard forces which are divided into State-assigned/resourced units and teams, and allocated Federal response forces. Forces assigned to State National Guard command and control include 57 Weapons of Mass Destruction—Civil Support Teams (WMD—CSTs) with 22 personnel in each, with one in every State (two in FL, CA, and NY), plus one in the District of Columbia and each of the U.S. territories within U.S. Northern Command's area of responsibility. There are also 17 CBRNE Enhanced Response Force Packages (CERFPs), and 10 Homeland Response Forces (HRFs). The Federal re-

³⁶ Ibid.

³⁸ Ibid, 73–74.

³⁷ Burke and McNeil, 106.

³⁹ Ibid, 80.

⁴⁰ Ibid, 74.

⁴¹ Ibid.

⁴² Ibid, 90.

⁴³ Ibid, 64.

⁴⁴ Ibid, 95.

sponse force includes the Defense CBRN Response Force (DCRF) and the Command and Control CBRN Response Element (C2CRE).⁴⁵

A review of the different emergency concept plans through the lens of the National Response Framework, indicates that a Nation's comprehensive defense strategy and robust capability to manage chemical and biological events resides primarily with the Title 32 National Guard forces. In every State, National Guard WMD-CSTs, CERFP, and HRFs stand ready to deploy at the direction of the Governor to integrate under the on-scene incident commander in support of the civilian LFA. Title 10 allocated forces would deploy on U.S. Northern Command's order to further augment local teams.

Any reduction in force as a result of sequestration must ensure that this CBRN capability is not diminished in any form. In fact, any realistic application of sequestration must consider preservation of the fundamental State ability to respond to CBRN incidents before divesting Federal DOD capacities from the National Guard. The United States is strengthened by having 54 individual States and territories that can handle immediate needs and only seek Federal assistance when it is truly required.

Future Missions for Homeland Response in Cybersecurity

For all of the same statutory reasons presented, the National Guard is the most appropriate force to augment community, private business, and State partners in the event of a cyber-incident affecting the health and welfare of our citizens necessitating an emergency response. We should respond in the same manner for these types of incidents utilizing the existing National Response Framework with the established protocols in the National Incident Management System. If the event exceeds State capabilities and first responders are overwhelmed, the same dual-status commander concept to integrate DOD capabilities into a coordinated response should be utilized.

Ms. MCSALLY. Thank you, General McGuire. You could join us here. It sounds like you know the procedures really well.

So, anyway, the Chair will now recognize Mr. Gianato.

STATEMENT OF JIMMY J. GIANATO, DIRECTOR, DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT, STATE OF WEST VIRGINIA, TESTIFYING ON BEHALF OF THE NATIONAL EMERGENCY MANAGEMENT ASSOCIATION

Mr. GIANATO. Good morning, Chairman McSally, Ranking Member Payne, Members of the subcommittee. Thank you for holding this hearing this morning on the important topic of military assistance and disaster response.

Today I am pleased to represent the National Emergency Management Association as the legislative committee chairman and Region III vice president. I am also the director of the West Virginia Division of Homeland Security and Emergency Management.

Effective collaboration between emergency management agencies and the military is crucial if we want to see successful responses to disasters. In West Virginia, we are very fortunate to have had great success working with our National Guard.

One of the most prominent examples of this has been our collaboration on the National Boy Scout Jamboree, which is a unique event held at the Summit Bechtel Reserve in rural Fayette County, West Virginia. This gathering of approximately 45,000 Scouts, leaders, and staff over the course of 10 days in the summer happens every 4 years.

Given the size of West Virginia, it is a monumental task to handle the logistics, security, and operational support for such a major

⁴⁵ LCDR David M. Aliberti, "Preparing for a Nightmare: USNORTHCOM's Homeland Defense Mission Against Chemical and Biological Attack." (U.S. Naval War College, Newport, Rhode Island, May 2014).

event. One of our challenges with the Jamboree was obtaining and managing resources for an event of that magnitude while still sustaining the ability to respond to any other disaster or emergency that occurred at that same time.

To accomplish the cooperation required to manage the Jamboree and other events, West Virginia developed a Joint Interagency Task Force, or JIATF, at the direction of Governor Tomblin in 2010. The Governor appointed me as the lead for that task force and the adjutant general of the National Guard to serve as the co-lead. A senior leader from the Governor's also office served as his liaison to the task force.

Not only did the task force work exceptionally well for the Jamboree, it was also successfully implemented during responses to a derecho that impacted our State and Hurricane Sandy, both of which created major power outages and infrastructure challenges for the State.

Within minutes of the derecho moving through West Virginia, 53 of our 55 counties were without power. The State had to quickly make decisions on how it would handle power restoration. After a discussion among the JIATF leadership, FEMA, and consultation with the Governor, West Virginia elected to use a capability developed by the West Virginia National Guard to support this mission in a cost-effective and efficient way. Such collaboration resulted with the State being able to manage its own power restoration capabilities at a significant cost savings.

Of course, West Virginia is not the only State to see such successful collaboration. In North Carolina, the North Carolina Department of Emergency Management was able to take advantage of the National Guard cybersecurity team to evaluate its IT architecture. They conducted a detailed study that identified several areas of improvement. This mission was conducted expertly and efficiently at a low cost.

The State of Washington has also built a successful partnership, as was seen during the deployment of the National Guard during flooding and the mudslides that occurred last year. The National Guard assisted the State's donations manager by supporting the movement of commodities, staffing warehouses, and assisting with the distribution of food.

The Emergency Management Assistance Compact has played an important role in facilitating collaboration among States and enabling them to share National Guard assets. EMAC provides a legal and procedural mechanism whereby emergency response resources can quickly move throughout the country, which lessens the need for Federal resources.

During Hurricane Sandy, for example, a helicopter crew was sent to New Jersey and staging and warehouse operations personnel were sent to New York. More recently, during the historic snowstorms in Massachusetts this past winter, Maine and Vermont provided Massachusetts with front-end loaders and dump trucks for snow removal. Just a few weeks ago, Louisiana provided helicopters and crews to Texas to assist with water rescue activities after floods hit the State.

The use of dual-status command is another development that has played an important role to strengthening the unity of effort and

overall coordination. As I mentioned earlier, the use of the dual-status command at the National Boy Scout Jamboree enabled effective coordination and integration and kept the operational control of the military units at that event under the control of the Governor, who consequently was able to retain control over the response.

Colorado has also successfully used a dual-status commander in several instances, including its 2013 floods, 2012 wildfires, and the 2014 Black Forest fires.

If we hope to see effective response to disasters, we must involve the whole community. One of the key partnerships in the whole community is between emergency management agencies and the National Guard.

Going forward, States must continue to look for opportunities to improve collaboration among emergency managers, the National Guard, and Federal forces. One method for doing this is the creation of formal mechanisms as we did with the JIATF.

Further, we need to continue to support EMAC. It has been invaluable in deploying National Guard assets throughout the country. We also need to continue support for the dual-status command, which has greatly promoted coordination in FEMA grant programs such as the Emergency Management Performance Grants, which have built and strengthened State capabilities.

I thank you for the opportunity to be here today, and look forward to answering any of your questions.

[The prepared statement of Mr. Gianato follows:]

PREPARED STATEMENT OF JIMMY J. GIANATO

JUNE 10, 2015

INTRODUCTION

Thank you Chairman McSally, Ranking Member Payne, and Members of the subcommittee for holding this hearing today. As director of the West Virginia Division of Homeland Security & Emergency Management and a regional vice president of NEMA, which represents the State emergency management directors of the 50 States, territories, and District of Columbia, I am pleased to be here to discuss the role of the military in disaster response and how emergency managers and the military work together.

As you know, emergency management is a “whole community” endeavor. It involves the public sector, the private sector, voluntary organizations, and individual citizens—all of whom are crucial to preparing for disasters and responding to and recovering from them. The National Guard and the military are an important part of the whole community and play a key role in efforts to address disasters, largely by supporting State and local responses. In my testimony this morning, I will focus on key lessons learned concerning how emergency managers and the military can work together effectively. Specifically, I will discuss the importance of collaboration, the value of the Emergency Management Assistance Compact, and the dual-status command.

LESSONS LEARNED

Partnerships Have Been Effective in West Virginia

More than anything else, effective collaboration between emergency management agencies and the military is crucial if we want to see successful responses to disasters. In West Virginia, we are very fortunate to have had great success working with the National Guard. One of the most prominent examples of this has been our collaboration on the National Boy Scout Jamboree, which is a unique event held at the Summit Bechtel Reserve in rural Fayette County, West Virginia. This gathering of approximately 45,000 scouts, leaders, and staff, over the course of 10 days in the

summer, happens every 4 years. Given the size of West Virginia, it is a monumental task to handle the logistics, security, and operational support of such a major event.

The Jamboree has posed some distinct challenges. Most significantly, the State needed to develop the resources for the Jamboree while also maintaining the capability to respond to and recover from any other disaster or emergency that could occur at the same time. It was obvious that coordination and collaboration with the National Guard were going to be crucial to making this happen. In 2010, Governor Earl Ray Tomblin brought together key members of his emergency response team and directed them to develop a construct that could be easily adapted to handle the Jamboree, as well as any major disaster that could affect the State. We subsequently adopted the concept of a Joint Interagency Task Force (JIATF) to develop the necessary planning and response capabilities.

The Governor appointed me to lead the JIATF and the adjutant general of the National Guard to serve as the co-leader. In addition, a senior leader from the Governor's office served as the liaison for the Governor to the JIATF. The JIATF included Department of Defense assets from the active-duty, reserve, and National Guard. These military elements served under a dual status, West Virginia National Guard Brigadier General who reported to and supported the JIATF. Utilizing the dual-status command kept the operational control of the military units at the National Boy Scout Jamboree under the control of the civilian leadership and allowed the Governor to retain control of the response to the event.

We successfully implemented the JIATF in 2012 during responses to a derecho and Hurricane Sandy. Both events created major power outages and infrastructure challenges for the State. For example, within minutes of the derecho moving through West Virginia, 53 of the 55 counties were without power. This included numerous water and sewer systems, hospitals and nursing homes, as well as many other types of critical infrastructure and retail facilities. Much of the power infrastructure was significantly damaged, and repairs took weeks to finish. This left the State with shortages of water, ill-functioning sewer systems, off-line gas stations, and many big box retailers that were unable to open. The State had to quickly make key decisions as to how it would handle power restoration and provide supplemental power to many of these facilities. After discussion among the JIATF leadership, FEMA, and consultation with the Governor, West Virginia elected to use a capability developed by the West Virginia National Guard to support this mission in a cost-effective and efficient way. Such collaboration resulted in the State being able to manage its own power restoration capability.

Collaboration Has Been Invaluable in a Number of States

Of course, West Virginia is not the only State to see such successful collaboration. Florida, for example, has seen a number of instances over the years. These include the Republican National Convention in 2012; the Annual All-Hazards Coordination Workshop; the FEMA Region IV Defense Coordinating Officers Defense Support to Civil Authorities Conference; State-wide annual hurricane conferences and exercises; the Annual United States Army Corps of Engineer, South Atlantic Division, Hurricane Rehearsal of Concept Drill; and Vigilant Guard 2013, which included Title 32 Forces, Title 10 forces, and dual-status commanders. Florida's efforts have not been without their challenges, however. They have found that there are numerous "common operating pictures" at the local, State, and Federal level that do not communicate interchangeably. This frequently creates gaps in response and recovery.

Similarly, North Carolina has also taken a number of steps to promote collaboration. For example, the Department of Emergency Management invites a North Carolina National Guard Domestic Operations officer to attend the weekly staff meetings in an effort to enhance coordination. Moreover, the Department of Emergency Management and National Guard work together on the State's Helo-Aquatic Rescue Team. The National Guard provides helicopters, along with pilots and aircrews, while the Department of Emergency Management coordinates the provision of local responders to serve as highly-skilled rescue technicians. In order to maintain the team's abilities at a high level, the Department of Emergency Management conducts monthly training. They are called out frequently during the summer months to rescue climbers in western North Carolina. Further, in April and May of this year, the Department of Emergency Management was able to take advantage of the National Guard Cybersecurity Team to evaluate its IT Architecture. They conducted a detailed study that identified several areas of improvement. This mission was conducted expertly and efficiently at a low cost. The team provided the Department of Emergency Management with a checklist to improve its IT infrastructure.

The State of Washington has built a successful partnership as well, as was seen during the deployment of the National Guard during flooding and the mudslide that

occurred last year. The National Guard assisted the State's donations manager by supporting the movement of commodities, staffing the warehouses, and assisting with the distribution of food. In addition, personnel from the military department provided transportation to and from school for children in communities isolated by the landslide. This made it possible for the children to stay on pace with the curriculum and to graduate on time. The National Guard also provided helicopters that supported movement of critical resources and movement of recovered human remains. Teams from the Washington Homeland Response Force and Colorado National Guard supported local responders as they uncovered the remains and delivered them to the medical examiner.

The Emergency Management Assistance Compact Facilitates Working Together

The Emergency Management Assistance Compact (EMAC) has played an important role in facilitating collaboration among States and enabling them to share National Guard assets. When States and the U.S. territories joined together and Congress ratified EMAC (Pub. L. 104–321) in 1996, it created a legal and procedural mechanism whereby emergency response resources such as Urban Search and Rescue Teams could quickly move throughout the country to meet disaster needs. All 50 States, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, and Guam are members of EMAC and have committed their emergency resources in helping one another during times of disaster or emergency.

Since its ratification by Congress, EMAC has grown significantly in size, volume, and the types of resources States are able to deploy. For example, over 67,000 personnel from a variety of disciplines deployed through EMAC to the Gulf Coast in response to Hurricanes Katrina and Rita, and 12,279 personnel deployed to Texas and Louisiana during Hurricanes Gustav and Ike. More recent uses of EMAC have included the response for the manhunt in Pennsylvania, severe weather in Mississippi, wildfires in Washington, tropical storms in Hawaii, and the historic snowstorms in Massachusetts. National Guard assets are often deployed through EMAC. During Hurricane Sandy, for example, a helicopter and crew were sent to New Jersey, and staging and warehouse operations personnel were sent to New York, among other things. During its 2013 flooding, Colorado received search-and-rescue assistance, as well as road work repair assistance. More recently, during the snowstorms in Massachusetts mentioned earlier, Maine and Vermont provided Massachusetts with front-end loaders and dump trucks for snow removal, and just a few weeks ago, Louisiana provided helicopters and crews to Texas to assist with water rescue activities after floods hit the State. EMAC has made it easier for States to assist each other effectively and share National Guard assets—with the added benefit of lessening the need for Federal resources in the process.

In addition to deploying throughout the country through EMAC, the National Guard works with EMAC members to improve the system. For example, in an effort to better integrate mutual aid partners before a disaster into the EMAC system, an EMAC Advisory Group was established. The group includes representatives from State and local government associations, the National Guard Bureau, emergency responder associations, public utility associations, the private sector, DHS/FEMA, and the Centers for Disease Control and Prevention. The discussions and interactions of this group have assisted in incorporating local government assets into the EMAC system for a unified response.

The Dual-Status Command Has Been a Success

The creation of the dual-status command has been an important development over the past few years. In the wake of Hurricane Katrina, policymakers realized that the separate chains of command for State and Federal military forces had made coordination difficult and contributed to the shortcomings of the response. In the years that followed, policymakers developed the dual-status command, which allows a single National Guard officer, responsible to the Governor of the affected State, to simultaneously direct both State (Title 32) and Federal (Title 10) military forces to ensure coordination during emergency response. This occurs with the consent of the Governor and authorization of the President. Ideally, it greatly strengthens unity of effort, a keystone of the National Incident Management System, and reduces the kinds of coordination problems seen during the response to Katrina.

The emergency management community has had great success with the dual-status command and shown that it is an effective way to operate and provide the appropriate command and control of all military forces during a response. Significantly, these forces remain under the control of the Governor—who has the ultimate responsibility for public safety of the State's citizens. Since 2004, 25 dual-status commanders have been appointed, and of those, 16 have had Title 10 forces assigned. In 2013, four States requested dual-status commanders for real-world

events. Two of those received Title 10 forces, including the National Boy Scout Jamboree in West Virginia.

As I mentioned earlier, the use of the dual-status command at the Jamboree enabled effective coordination and integration and kept the operational control of the military units at the event under the control of the Governor—who consequently was able to retain control over the response to the event. Another successful use of the dual-status command was seen at the 2012 Republican National Convention in Florida. During this special National security event, Tropical Storm Isaac wreaked havoc on the convention schedule and interrupted travel plans of many of the estimated 50,000 delegates, media, and others planning to attend. The use of dual-status command greatly facilitated coordination and enabled the State to respond more effectively to a very challenging incident.

Colorado has also successfully used a dual-status commander in several instances—including its 2013 floods, 2012 wildfires, and the 2013 Black Forest fires—and its use promoted effective coordination and response. Further, the outstanding relationships between the State, FEMA Region VIII, the FEMA Region VIII Defense Coordinating Officer, the Colorado National Guard, and the Department of Defense facility commanders in the State facilitated the seamless initiation of disaster requests, transition of command, and effective coordination. While each of these disasters had severe consequences—such as fatalities, damaged and destroyed infrastructure, and environmental damage—each would have been worse without the missions completed by the Colorado National Guard and Department of Defense assets. Training for State emergency management and military personnel concerning defense support to civil authorities has been invaluable, helping to familiarize them with relevant capabilities and procedures, as well as strengthening important relationships.

CONCLUSION

If we hope to see effective responses to disasters, we must involve the whole community, and one of the key partnerships in the whole community is between emergency management agencies and the National Guard. In West Virginia, we have had great success in strengthening this partnership, and other States have as well. As a result, these States are better prepared to respond to and recover from disasters.

Going forward, States must continue to look for opportunities to improve collaboration among emergency managers, the National Guard, and Federal forces. One method for doing this is the creation of formal mechanisms, as we did with the JIATF in West Virginia. But as Florida, North Carolina, Washington, and Colorado show, there are other ways as well. Further, we need to continue to support EMAC. It has been invaluable in deploying National Guard assets throughout the country and enabling States to support each other more effectively, consequently reducing the need for Federal resources. We also need to continue to support the dual-status command, which has greatly promoted coordination, and FEMA's grant programs, such as the Emergency Management Performance Grant, which have built and strengthened State capabilities.

I thank you for the opportunity to testify today and welcome any questions you may have.

Ms. MCSALLY. Thank you, Mr. Gianato.

The Chair now recognizes Mr. Gaynor for 5 minutes.

STATEMENT OF PETER T. GAYNOR, DIRECTOR, EMERGENCY MANAGEMENT OFFICE, STATE OF RHODE ISLAND

Mr. GAYNOR. Good morning, Chairman McSally, Ranking Member Payne, and distinguished Members of the subcommittee. It is a pleasure to be here today to discuss the State of Rhode Island's long and on-going partnership with our National Guard. Again, my name is Pete Gaynor. I am the director of the State Emergency Management in the State of Rhode Island.

As the director and a professional emergency manager, I am responsible for preparing for emergencies, coordinating the activation and use of resources, ensuring an integrated and unified response, and managing the recovery effort in order to support our local, State governments, citizens, and businesses.

I am pleased to be testifying before the committee today and have submitted my full statement to the committee, which I ask be made part of the hearing record.

Today with this testimony I want to provide the subcommittee with information on the long-standing history of cooperation and partnership between our State government and the Army and Air Guard forces based in our State. I hope to give you a sense of how we in Rhode Island have coalesced to make our State safer, more secure, and more resilient against a host of natural and man-made hazards.

Additionally, I would like to highlight the challenges and opportunities we face in addressing the growing cyber threat. The Rhode Island National Guard consists of about 3,300 members. Most of its members are residents of Rhode Island and neighboring States.

Under State law, the National Guard provides protection of life and property, preserves the peace and order and public safety. The Rhode Island National Guard has served and remains engaged in the global war on terror and overseas contingency operations with units that have deployed world-wide in direct support of National security objectives.

Within the State of Rhode Island, the Guard is consistently called upon in disasters by the Governor to provide military support to civil authorities during local emergencies, National disasters, and significant severe weather events. The Rhode Island National Guard provides a unique role with a distinct local response mission. They are our neighbors. They are our citizen soldiers.

Since 2010, the Rhode Island National Guard has activated over 1,750 citizen soldiers to respond to numerous natural disasters and events while simultaneously deploying over 1,400 individuals to overseas assignments. Specific events at home consist of the 2010 March floods, Hurricane Irene in 2011, Hurricane Sandy in 2013, the Boston Marathon bombing in 2013, and the winter blizzards of 2013 and 2015. They all required National Guard personnel and equipment.

Compared to the previous 50 years, the Rhode Island National Guard activation over the last 5 years for State emergencies has increased over 200 percent. Emergency management requires a team effort from all facets of our community to assist with the response and recovery, from citizens preparing to be on their own for the first 72 hours of an emergency, to electrical and gas providers teaming up with us in our State emergency operations center, State departments such as the Department of Transportation providing sand and salt to communities in need, and then our National Guardsmen providing law enforcement support during special events. We simply require the whole community to be successful to navigate a crisis or one of these special events.

Again, the Rhode Island Emergency Management Agency is only one part of the State's emergency management team. We must leverage all the resources of our collective team in preparing for, protecting against, responding to, and recovering from all hazards. Collectively, we must all meet the needs of the entire community in each of these areas.

The National Guard is a unique and indispensable force multiplier in preparedness efforts and during times of need, from pro-

viding expert training and exercise support or in the movement of dispensing commodities to local communities or providing technical assistance in our cyber initiative. The National Guard is ready, reliable, and a diverse force, accessible for State, multi-State, and Federal purposes.

Cybersecurity is an emerging role, requiring a synchronized and holistic approach, not unlike the counter-drug mission or the CBRN, or chemical, biological, radiological, nuclear forces. Cyber and cyber defense are emerging roles for the National Guard, in partnership with local, State, and Federal agencies, and businesses, requiring updated and new laws to mitigate and prevent network attacks from domestic and foreign players.

This is a new paradigm in consequence management. Hacking into infrastructure nodes such as power grids, telecommunications sites, financial institutions can be as devastating as a hurricane or a blizzard.

In conclusion, the cohesive partnership between the civil authorities and the National Guard is instrumental in life safety and the protection of our citizens. This partnership enhances our ability to prepare for, respond to, and recover from disasters and assists in defending the United States against increasing cyber attacks and acts of terrorism.

We look forward to working with our partner and continuing our mission to reduce loss of life and property in disasters, to protect our State's critical infrastructure from all hazards by means of comprehensive emergency management policies, and legislative initiatives.

Chairwoman McSally and subcommittee Members, thank you for the opportunity to be here today. I stand ready to answer any questions you may have about our partnership with the Rhode Island National Guard.

[The prepared statement of Mr. Gaynor follows:]

PREPARED STATEMENT OF PETER T. GAYNOR

JUNE 10, 2015

Good morning Chairman McSally, Ranking Member Payne, and distinguished Members of the subcommittee. It is a pleasure to appear before you today to discuss the State of Rhode Island's long and on-going partnership with our National Guard. My name is Pete Gaynor and I am the director of emergency management in the State of Rhode Island. As the director and a professional emergency manager, I am responsible for preparing for emergencies, coordinating the activation and use of resources, ensuring an integrated and unified response, and managing the recovery effort in support of our local and State governments, citizens, and businesses.

I am pleased to be testifying before the subcommittee today. I have submitted my full statement to the committee, which I ask be made part of the hearing record.

Today, with this testimony, I want to provide the subcommittee with information on the long-standing history of cooperation and partnership between our State government and the Army and Air National Guard forces based in our State. I hope to give you a sense of how we in Rhode Island have coalesced to make our State safer, more secure, and more resilient against a host of natural and man-made hazards. Additionally, I would like to highlight the challenges and opportunities we face in addressing the growing cyber threat.

The Rhode Island National Guard consists of more than 3,300 members. Most of its members are residents of Rhode Island and neighboring States. Under State law, the National Guard provides protection of life and property and preserves peace, order, and public safety. The Rhode Island Guard has served and remains engaged in the Global War on Terror and Overseas Contingency Operations, with units that have deployed world-wide in direct support of National security objectives.

Within the State of Rhode Island, the Guard is inconsistently called upon in disasters by the Governor to provide military support to civil authorities during local emergencies, natural disasters, and significant severe weather events. The Rhode Island National Guard provides a unique role with a distinct local response mission. They are our neighbors, they are our citizen soldiers.

Since 2010, the Rhode Island National Guard has activated over 1,750 citizen soldiers to respond to numerous natural disasters and events while simultaneously deploying over 1,400 individuals in four company-sized units overseas. Specific events such as the 2010 March floods, Hurricane Irene 2011, Hurricane Sandy 2013, the Boston Marathon bombing in 2013 and the winter blizzards of 2013 and 2015 all required Rhode Island National Guard personnel and equipment. Compared to the previous 50 years, Rhode Island National Guard activation over last 5 years for State emergencies has increased over 200 percent.

Emergency Management requires a team effort from all facets of our community to assist with response and recovery. From citizens preparing to be on their own for the first 72 hours of an emergency, to electrical and gas providers teaming up with us in the State Emergency Operations Center, State departments, such as the Department of Transportation providing sand and salt to local communities in need, and our National Guardsman providing law enforcement support during special events. We simply require the whole community to help successfully navigate a crisis or special event.

The Rhode Island Emergency Management Agency is only one part of our State's emergency management team; we must leverage all of the resources of our collective team in preparing for, protecting against, responding to, recovering from, and mitigating against all hazards; collectively we must meet the needs of the entire community in each of these areas. The U.S. Armed Forces and National Guard have a historic precedent and enduring role in supporting civil authorities during times of emergency, and this role is codified in the National defense strategy.

The National Guard is a unique and indispensable force multiplier in preparedness efforts and during times of need, from providing expert training and exercise support in the movement and dispensing of commodities to local communities to providing technical assistance to our Cyber Initiative. The National Guard is a ready, reliable, and diverse force accessible for State, multi-State, and Federal purposes.

Typical State active-duty missions include Security, Traffic Control, Evacuation, Search and Rescue, Civil Disturbance Control, Fire Protection & Fighting, Natural Disaster Relief, Debris Clearance and Emergency Response & Recovery efforts.

Our Civil Support Team (CST), a high-tech hazardous response and monitoring team works hand-in-hand with local, State, and Federal agencies in all mass-gathering events such as the recently-concluded 2015 Volvo Ocean Race in Newport, Rhode Island. The Rhode Island National Guard continues to be called upon during winter storms, flooding, and hurricanes. The National Guard spectrum of support includes a Cyber Defense Team that provided network security support for the Presidential Inauguration in 2013.

Cybersecurity is an emerging role requiring a synchronized and holistic approach. Not unlike the counter drug mission or the Chemical, Biological, Radiological, Nuclear, Explosives (CBRNE) forces, the CBRNE Enhanced Response Force Package (CERFP), and the Homeland Response Force (HRF); cybersecurity and cyber defense are emerging roles for the National Guard in partnership with local, State, Federal agencies and businesses requiring updated or new laws to mitigate and prevent network attacks from domestic and foreign players. This is a new paradigm in consequence management; hacking into critical infrastructure nodes such as power grids, telecommunications sites, or financial institutions can be as devastating to the public as a hurricane or blizzard.

CONCLUSION

The cohesive partnership between civilian authorities and the National Guard is instrumental in life safety and the protection our citizens. This partnership enhances our ability to prepare for, respond to, and recover from disasters and assists in defending the United States against increasing cyber attacks and acts of terrorism.

As challenges continue to evolve, we must continue to adjust and shape our emergency management and homeland security strategy and enhance our whole-community concept. In the State of Rhode Island, the National Guard has proven its value time and time again. Its relentless commitment and dedication to serve and protect is unmatched.

We look forward to working with our partner and continuing our mission to reduce the loss of life and property in disasters, and to protect our State's critical in-

frastructure from all hazards by means of comprehensive emergency management policies and legislative initiatives.

Thank you, Chairman McSally and subcommittee Members, for the opportunity to appear before you today. I stand ready to answer any questions you might have.

Ms. MCSALLY. Thank you, Mr. Gaynor.

I now recognize myself for 5 minutes to ask questions.

General McGuire, with your experience and listening to the other panel, I would like your unique perspective on any gaps in structure and procedures in planning related to this mission and specifically the role of the National Guard.

I am just thinking about it. It is all local. So I am thinking a disaster or crisis happens in southern Arizona. My assumption would be Governor Ducey would first be looking to use the capabilities that you have in the Guard and then, if it exceeds that capability, perhaps the disaster be declared and then you would be under Title 32. Then the next level would be, you know, Title 10 forces also supporting.

So my assumption is that Davis-Monthan and Fort Huachuca forces would be the next ones that would be asked to potentially support. Because, just like you, they live in the community, they are familiar with the community, they understand the dynamics there.

Is that a valid assumption? Are there table-top discussions within sort-of geographic regions to be able to make sure that the proper understanding of roles and responsibilities would happen or is that all being done at kind of the FEMA regional levels and, you know, Colonel Meger, the DM commander, and General Ashley at Fort Huachuca would just sort of have to do a pick-up game with their forces in the event of a disaster or a response within southern Arizona?

General MCGUIRE. So let me start with the etymology of a disaster question, and I will go back to the gaps thing.

So as the State emergency manager, what would happen if we had a major event in southern Arizona is that there would be an incident command stood up under the National Incident Management System and every asset delivered from the State would be in support of that incident command.

When the resources were exhausted in southern Arizona, that would go to the county level. Let's say it is in Pima County. Once Pima County has been overwhelmed, they direct the resource request to the State.

Coincident to that, the Governor is making, in consultation with me, a decision about whether or not to declare a state of emergency. If a state of emergency is declared in Arizona—and I will talk specifically about our case—we have, by statute, legislatively set aside \$4 million for a State emergency fund.

Those funds could be used to call guardsmen immediately to duty under State Active-Duty provisions. As the resource meter begins to run—and it is not just for the Guard. It could be for overtime for neighboring county sheriffs or whatever we believe is the best resource to deliver.

As that is evolving, the Federal bases—Fort Huachuca, Davis-Monthan, Luke Air Force Base, anybody in the affected area—those are seen at the State level as community partners. So in a

State like Georgia, where you have Fort Benning and Moody Air Force Base and all these installations, they are community partners in our communities, and we look to them to see if there is any mutual aid compacts.

But the answer to your question about—once we believe there is going to be a Stafford Act invoked, we work through the DCO at FEMA Region IX. We have very—what I would call well-codified paths about how to respond or get response from the Federal authorities.

I am not a NORTHCOM guy, but my observation is they don't link back capabilities to a region. So if an engineering battalion is not available at Fort Huachuca and the closest one is at Fort Leonard Wood, Missouri, that is where they are going to come from.

So, really, we look at the airmen and soldiers at that base as citizens of Arizona in terms of providing life, limb, protection of property. Unless they have a specific capacity that is needed by the incident management system, they are not necessarily part of the response unless the incident happens at their installation. Then you get into a situation where you could have a dual-status commander that is a Title 10 guy. So that is how that works.

Do you want me to talk about the gaps?

Ms. MCSALLY. Yeah. Absolutely. The gaps, if you could, from your perspective and knowledge.

General MCGUIRE. So the gaps I think goes a little bit to the Representative from Rhode Island's question about—we just had last week in Arizona a State-wide emergency exercise with a focus on cyber.

This is the best way I can crystallize that 1-day exercise, that a cyber attack or a cyber incident only becomes an emergency when there is a kinetic impact on the citizens. So you have lost power, wastewater. There is inability to support continuity of Government. Police and fire is affected so we can no longer respond. Hospitals are shut down.

Those types of events, invariably, we have found are a result of some nefarious act, which goes to the idea of why the Guard is uniquely situated to be what I call the defensive and restorative force.

Because when we run those drills in Arizona, we can deal with the National Cyber Incident Center, the NCIC and DHS, and all the lead Federal law enforcement agents to help us with that. But what we find in Arizona is we lack the manpower to literally go out and do the restorative mission.

We have also found that, when we do these exercises, invariably we are going to run into Posse Comitatus issues if we use Title 10 forces to do that because there will be exculpatory evidence discovered as a result of that action that more than likely will make forensic discovery of who committed this act inadmissible at least in our court system, where, if we use a Guardsman under Title 32 or Title 10, we are, for lack of a better term, a good manpower pool that is tied to the tech industry in Arizona—Intel, Microsoft, whatever—Guardsmen are there that can come in and do that, discover that, and then turn it over to Federal, State, and local law enforcement folks.

I have never heard before today that there is an involvement of U.S. Cyber Command taking the lead for any kind of a Federal disaster inside the continental United States. So I think that DOD should come back and explain that.

Ms. MCSALLY. Yeah. We need to follow up on that. That was alarming as well. I am out of my time. Perhaps we can have another round here. But I want to give everybody an opportunity here.

So the Chair now recognizes Mr. Langevin—I am sorry—Mrs. Watson Coleman. I am sorry. I was looking right past you. I didn't mean to. So, please.

Mrs. WATSON COLEMAN. Thank you, Madam Chair. Thank you for being here.

Major General McGuire, the unpredictable Federal budget process of recent years, coupled with sequestration, has taken a toll on important programs across the Federal Government. Components even within Federal agencies are competing for limited dollars, resulting in robbing Peter to pay Paul. This approach is even evident in the Department of Defense.

Can you talk about how the lack of predictability and uncertainty surrounding the Federal appropriations process, coupled with the reduced budgets, has affected the National Guard's readiness to fulfill its domestic response mission?

General MCGUIRE. Yes, ma'am. The unpredictability and the nature of the continuing resolutions and operating on sequester budgets has made it difficult on all components of the DOD. In my role as a State cabinet secretary receiving resources from the State, we have seen cuts in those areas affect our ability to get formations ready.

That said, when you talk about domestic response, I often ask my Army subordinate commanders, "What is the Army military specialty for filling sandbags?" There isn't one. Really, what I look at is the unique capability of our soldiers, and this is why I am so passionate about the idea of indiscriminate cuts to end strength in the Guard.

In a resource-constrained environment, the most cost-effective force, the most embedded force forward, to protect our most valuable resource, our citizen—why in a resource-constrained environment we wouldn't holistically look at how can we best build a force in a resource-constrained environment that can meet the expeditionary National security strategy to fight wars, yet maintain a huge base of trained and ready M-Day or drill-status Reserve-status Guardsmen in our States that can be called forward?

So our military commanders are doing very well in terms of maintaining the morale of the citizen soldiers and airmen. They are excited about the missions that they do. I haven't yet seen huge losses in attrition as a result of declining dollars.

But I do see that weapons system modernization and some of the things that need to happen as a result of Federal priorities—those things that aren't happening will eventually take a toll. But in terms of our ability to meet citizens' requirements right now, there has been no wavering in that.

Mrs. WATSON COLEMAN. Thank you.

Sort-of to drill down on a particular issue, could you discuss the impact of this on CBRN capabilities specifically?

General MCGUIRE. So my example in my written statement about the chemical, biological, radiological, nuclear response force.

So post-9/11 there were similar, I think, type hearings. We talked about the idea that we have prepositioned people that could serve in State Active-Duty Title 32 or Title 10 statuses, and wouldn't that be a convenient place for us to station those response forces?

So there was deliberate decisions made to move 80 percent of the 18,000 that Mr. Salesses referred to. Eighty percent of that capacity is in the National Guard. So, of those 18,000 MOS-trained specialists that are resident in the Guard, my comment to this subcommittee is to say that any cut to the Guard needs to evaluate how that 18,000-man force is affected in the force structure changes that they make.

While this subcommittee doesn't have the necessary purview of HASC and HAC-D, it still affects everything we do with homeland response. So that was the reason for those comments in my written statement.

Mrs. WATSON COLEMAN. Thank you. I yield back.

Ms. MCSALLY. The good news is both myself and Mr. Langevin are on the Armed Services Committee as well. So we can bring these perspectives to our work on that other committee.

The Chairman now recognizes Mr. Loudermilk from Georgia.

Mr. LOUDERMILK. Thank you, Madam Chairman.

General, I want to ask you the same question that I asked the previous panel about DOD Instruction 2025.22. The gentleman answered the question by saying there was no changes made to that DOD instruction, only just codifying procedures that was already there.

How would you answer that same question? What changes has the Department of Defense made to pre-established procedures in DODI 3025.22 and how do they affect the Governor's ability to request authorization to use National Guard forces for Title 32 Defense Support of Civil Authorities (DSCA) purposes? Additionally, what changes to preestablished procedures have been made, and what is the effect?

General MCGUIRE. I am unfamiliar with pre-established procedures. But my reading of it would indicate that it makes it at least appear procedurally more difficult for a Governor to request authorization for Title 32 resources in an event where he believes there is going to be a Federal nexus, either a Federal declaration or a multi-State or a Federal interest, in our case, like the Southern Border with Mexico.

It doesn't prohibit the Governor from going directly to the Secretary of Defense to request additional Title 32 dollars under 502(f), a provision that was well scrutinized after 9/11 and one that I think is really critical.

As we mirror that against the comment that the Chairman made about AFRICOM and the HADR, Humanitarian Assistance Disaster Relief, it is my observation, having just finished up CAPSTONE just a few weeks ago, this Goldwater-Nichols Act-required course, that the comment would be that, of my 48 classmates, there is a huge dearth of knowledge that there is even a Federal statute

called Title 32 and an authorization that exists in such a way where we can deliver Federal resources to the State and maintain command and control under the Governor as commander-in-chief.

The more we push that out of the equation and make it either a Title 10 answer or a State Active-Duty solution, you start to make the burden very arduous for the State to power up jet aircraft to do surveillance or helicopter and rotary wing.

I wouldn't categorize it as that there was a change. But when you read it to someone who is not familiar with it—there was a comment made about it is very complex—it doesn't specifically say in there, sure, the Governor can always go VFR direct.

I think that was intentionally written in the language so that it didn't say that. Does that make sense? That is my opinion. But I wasn't part of that DOD panel that created it. I can certainly look into it more and get back to you in more detail.

[The information follows:]

Historically, Governors have communicated directly with the Secretary of Defense (SECDEF), the Chief of National Guard Bureau (CNGB), and even the White House to request Title 32 authorization for National Guard DSCA missions. As recognized by the National Response Framework, Governors are the individuals that possess the greatest situational awareness in a State-based disaster and the Constitutional and statutory responsibility for public safety and welfare within their sovereign States.¹ Title 32 status has traditionally been used in preparing for and responding to domestic emergencies, such as Hurricane Katrina in 2005 and Hurricanes Ike & Gustav in 2008, and for National Special Security Events such as the Democratic and Republican National Conventions.

The authors of DODI 3025.22, however, all but eliminated the Governor from the process. For example, Paragraph 3(f) of DODI 3025.22 states: "The use of the National Guard for DSCA **will not be approved** to: (1) Perform DSCA operations or missions at the direct request to DOD of a State or local civil authority . . ." (emphasis added). Instead of the Governor of the affected State, DODI 3025.22 vests the authority to recommend the use of National Guard forces in Title 32 status in "the Assistant Secretary of Defense for Homeland Defense and America's Security Affairs (ASD(HD&ASA)), as the principal civilian advisor for DSCA . . .". This constitutes an unprecedented doctrinal shift of authority from the Governors, i.e. the commanders-in-chief of the States to non-military DOD appointees. The Governors of the sovereign States are now relegated to simply providing their "concurrency" to the use of their National Guard forces. Of course, it is inconceivable that any Governor faced with a disaster in his or her State would withhold his or her concurrence and the Governor's authority to concur is, therefore, merely symbolic in practice. DODI 3025.22 improperly removes the well-established role of the State's Governor in this critical dialogue with the Federal Government.

There are other areas of concern in DODI 3025.22. For example, paragraph 3(a) should be amended to recognize the CNGB's role as the principal military advisor for National Guard DSCA, instead of vesting all advisory authority in the ASD(HD&ASA)—a Federal civilian appointee. Paragraph 3(c) also suggests that Title 32 funding for National Guard troops responding to an emergency or disaster must be reimbursed by the State in *all* instances. This paragraph should include a brief statement recognizing that non-reimbursable support may be provided in certain situations, such as when required by law or when authorized by law and approved by SECDEF.

Mr. LOUDERMILK. In effect, have there been some changes in the way that Governors request Title 32?

General MCGUIRE. I don't know that it was codified in a DODI, a DOD instruction, previously. But it was informally understood that the Governor always had the ability to go through the adjutant general right to the Secretary of Defense and say, "We need additional Title 32 authorization."

¹Department of Homeland Security, *National Response Framework*, Second Edition (May 2013) 13, available at <http://www.fema.gov/national-response-framework>.

Mr. LOUDERMILK. Currently what are they proposing?

General MCGUIRE. Currently that procedure still exists, but the DODI says it needs to make sure that it is going to rise to the level of the Stafford Act and that there is a clear Federal nexus.

An example of 502(f) that is being executed right this minute in Arizona is our Southwest Border mission, where we have Guardsmen serving in 502(f) because of—Title 32 because of the law enforcement piece and the counter-narcotics incidents that occur down there and the collection of evidence.

It is the right status to use those National Guard forces in. So it would be disingenuous to say that status isn't used. It is used currently today on the Southwest Border and could be used in an emergent response at any time.

Mr. LOUDERMILK. Now, do you know if Governors were consulted with these changes?

General MCGUIRE. I do not know what level of consultation that Governors were on. We—I say Arizona—was previously a member of the Council of Governors, working with the National Governors Association on that collaboration.

When Governor Ducey was elected, the seat went with the actual individual. So we have not been a member of that Council since January. So I haven't been familiar with current negotiations. I can follow up with more information after the hearing.

[The information follows:]

As I mentioned during my oral testimony before the subcommittee, the Governor of Arizona is no longer a member of the Council of Governors and I therefore cannot speak on the Council's behalf. My understanding after speaking with representatives of the Council of Governors, however, is that the authors of DODI 3025.22 did not seek input from the Council before implementing these unprecedented changes to established policy and procedures. In fact, it appears that the authors ignored repeated requests from the Council of Governors to meet, confer, and exchange views and information regarding the DODI 3025.22 when it was still in draft form.

For further information and an official response from the Council of Governors, I recommend the subcommittee contact the National Governors Association.

Mr. LOUDERMILK. Okay. I appreciate that. To the best of your knowledge do the Nation's Governors still object to these changes?

General MCGUIRE. I can tell you the Council of Governors advocates for all 50 Governors, the 3 territorial Governors, and there has been no communication about concurrence or nonconcurrence on that. Let me check on that more thoroughly and get back to you.

[The information follows:]

It is my understanding from speaking with representatives of the Council of Governors that the Nation's Governors are adamantly opposed to these unilateral changes to long-standing policy; changes that interfere with the Governors' right to engage in direct communications with the Secretary of Defense, the Chief of the National Guard Bureau, and even the White House if necessary. Again, I respectfully refer the subcommittee to the Council of Governors through the National Governors Association.

Mr. LOUDERMILK. Thank you. I yield back.

Ms. MCSALLY. The Chair now recognizes Mr. Langevin from Rhode Island.

Mr. LANGEVIN. Thank you, Madam Chair.

Again to our panel of witnesses, thank you for being here, for being on the front lines, EMA, and all that you do to keep our people safe.

If I could begin with our witness from Rhode Island, Mr. Gaynor, again I want to thank you for coming down to testify today, especially on short notice.

Continuing on the cyber domain, you know, clearly, when you think of cyber, this is a new concept to really think of this potentially as an EMA-related issue for emergency preparedness and response.

But can you talk about Rhode Island EMA's role in convening stakeholders to protect critical infrastructure in the State from cyber attack and, at least as importantly, help ensure that the State is able to quickly recover from a disaster.

Mr. GAYNOR. Thank you, Congressman.

For a couple years now, the State, in partnership both within the State, State government, and within the region of New England, have been partnering on some planning efforts to bolster our cybersecurity effort.

The first thing that we actually did, again, as a region, was develop these teams called cyber disruption teams that consist of emergency managers, law enforcement, private industry, public industry, IT professionals, that can help both State and local jurisdictions deal with a low-level cyber incident.

As we have moved through the past couple years, we have matured. We have written a cyber protection plan. We have written a cyber incident action plan. Most recently, Governor Raimondo of Rhode Island instituted an Executive order establishing the Cybersecurity Commission to look at two basic things to ensure that the State is ready should it be the recipient of a significant cyber attack.

So, first, we want to make sure that we improve State cybersecurity practices in order to protect both Government, businesses, and citizens of Rhode Island. The second part of that is, because there is a significant deficit of cyber experts these days, to accelerate the growth of Rhode Island's cybersecurity industry in order to bring jobs and opportunity to Rhode Island.

So two phases: Let's get our house in order and then let's kind of build a home-grown cybersecurity expertise within the State.

Parallel with all those efforts we have been exercising with numerous critical infrastructure, key resource sectors, in cyber tabletops, from the banking sector to the wastewater sector, to the electrical sector, and trying to get everyone to understand what is at stake and what the consequences could be should Rhode Island have a cyber attack.

Mr. LANGEVIN. Very good. Thank you for that update.

If I could follow up, the 102nd Information Warfare Squadron of the Rhode Island Air National Guard based in North Kingstown is obviously an important State resource.

As someone who is on the ground and the front lines as an emergency manager, can you share some thoughts about the specific opportunities that the presence of the National Guard cyber capabilities provides both proactively and reactively in the cyber domain?

Mr. GAYNOR. So in my opening statement I talked about the uniqueness of the Rhode Island National Guard and National Guard in general. In Rhode Island, as you referenced, the 102nd Network Warfare Squadron is a unique capability resident in

Rhode Island, made up, again, of our National Guardsmen. In their uniform they are part of the squadron and in their civilian attire they work for cybersecurity companies. It is a resource that we have tapped for numerous training and exercises.

If you ask some of my partner agencies within the State, like the Rhode Island State Police Cyber Crimes Unit, there is a daily need for cyber experts that we don't have, whether it be in a local jurisdiction or even in the State.

So, again, just like you would call a guardsman to help with a hurricane or a blizzard, those neighbors coming to help you, some of the friction that we have had in, again, tapping these unique neighbors, our cyber experts, to help locals and State in a cyber attack has been difficult. Again, we are pressing the envelope in every way. So for the most part the 102nd is helping us with training and assist and technical support.

Mr. LANGEVIN. Very good. Thank you.

Well, I have other questions, but my time has expired, so I will yield back.

Ms. MCSALLY. We could either do another round, or I could give you a couple more minutes.

Mr. LANGEVIN. Okay. That would be great. Just one. Thank you then.

On those particular issues, what limitations do you face that prevent you from realizing the vision where you would like to see it be more effective, and is it a problem of resources, authorities, or lack of experience in working together through exercises?

Mr. GAYNOR. I think our gap is the legal justification to use cyber forces, National Guard cyber forces, and again in a State event, whether it be local or a State event, because the cyber threat is unique, and it is much different than a hurricane or a winter storm. In the hurricane season, you can see that hurricane coming days and days ahead of time, and you kind of know what is going to happen when the hurricane comes by, you know the effects of that, and then it is gone. Most communities, both local and State, are prepared for a hurricane, so they have some resources.

When it comes to a cyber attack or a cyber incident, again, it is happening right now. You don't see it. It is hard to describe. You may not know it has happened even after it has happened. Local and State for the most part does not have enough bandwidth to deal with a cyber incident, cyber crime. Again, being able to tap into that unique capability, again, is one of those things that as the State emergency manager, I want to use all resources at my disposal.

So whether it is from Department of Transportation, I am looking for a plow, or it is from the National Guard, I am looking for a cyber expert on a particular threat, I think it is one of these, again, I will say emerging threat, but it has been with us for a while, but it is a growing threat that will only get worse. If we don't figure out how to instantaneously deploy those guardsmen, again, in support of their home State, then I think we are going to fall short.

Mr. LANGEVIN. Sure. On those authorities in the National Defense Authorization Act, I am actually asking for some more clarification on those so that we are thinking these things through more

proactively and we will have some answers hopefully within the year.

But, General McGuire, did you want to comment on anything? I know that you obviously are on the front lines.

General MCGUIRE. Well, I would say that the legal authorities as they—so I am not very good at cyber, like I turn on the computer and things are working.

Mr. LANGEVIN. You are like most Americans.

General MCGUIRE. But I understand this part of it, that that is how all of our SCADA systems and critical infrastructure is managed right now. So the kinetic effect that it can have can be tremendous.

So I in some ways say let's just keep this simple. We have a National response framework. That National response framework, if you had listened to the previous panel, means that it is a National requirement. No, the National response framework is something that we all agree to Nationally that would be how we would respond, and it would start at the local level.

So in any incident there is a point of impact. In this case it could be the banking industry or whatever it might be. Typically we find with these incidents that our partners in many of these areas are private industry or not Governmental agencies that run some of these critical infrastructure networks for us.

So they have to have a motive to come to the table, and we have tried to make sure that we reach out to them and understand that we are there, especially in the National Guard, to be, as I mentioned, restorative—so that requires manpower—and defensive. We are not outward-looking trying to counterattack a nation-state, were that to be the responder. That clearly I think falls in the domain of U.S. Cyber Command.

But the problem is we are having a hard time defining where that line lies, which is why I believe that the National Guard is the right force to be trained with the technical skills so that they are more capable than I am at cyber, and that they can deploy under legal authorities, either State Active-Duty or Title 32, not unlike Southwest Border, where we don't run into these evidentiary collection issues that would be evident under Posse Comitatus.

So that is kind of how I view the National Guard's role in cyber, is that we are always going to be defensive and restorative and that we are the correct first choice for that for the same reason I made in my opening statement. We are the right first choice when local first responders are overwhelmed because we are there, we are knowledgeable, we have tactical understanding of even the local banks, and we have relationships there in each of those organizations.

Mr. LANGEVIN. Completely agree. As having had interaction with our 102nd Network Warfare Squadron, I think that the National Guard in some ways, in many ways, is an underappreciated resource in that we have people that are in the National Guard and that also in their private lives are day-to-day at work in these fields developing and using this expertise on a day-to-day basis. So we could make better use of that, I think, and appreciate it more.

General MCGUIRE. Yes, sir. The synergy gained between your commercial industry point of employment—let's say you are a software writer for Microsoft and you are also a drill status guardsman—boy, while we train them at U.S. Cyber Command, many of the skills that they have learned at Microsoft are going to be just as valuable in these kind of responses, not unlike a plumber or a carpenter or a law enforcement officer or a contracting attorney when we have a big disaster.

Mr. LANGEVIN. Without a doubt.

So, Madam Chair, thank you for the extra time.

I would just mention that on the preparedness side of it, one of the things I am very proud of in what we are doing in Rhode Island, and Mr. Gaynor mentioned it, is developing the Cyber Disruption Team—this actually happened under the previous administration, under Governor Chafee—and the Rhode Island State Police taking the lead, along with the EMA, and working with the private sector went out and identified our elements of critical infrastructure that could be affected by a cyber-related event.

Then they work to determine how they would both prepare against it from happening in the first place, but then also developing a recovery plan for resilience purposes as well. So it is a good model, and I know we are going to continue to learn a lot from it.

So thank you, and I yield back.

Ms. MCSALLY. Thank you.

Okay. Last round for myself, I guess, for a couple more questions.

Mr. Gianato, you have got vast experience in emergency response, and a lot of these procedures and things, as we have talked about in both panels, have been getting better over the years. In your current position, have you recently had to use the National Guard, or has the National Guard responded in either of their capacities? Specifically, last year's chemical spill that was impacting 30,000 residents. What is your perspective on the benefits of using the National Guard in this role?

Mr. GIANATO. To answer your question on the chemical spill, the National Guard was actively involved and played a major role in the response to that. I think it coupled, to build upon what General McGuire was saying, we utilized the CST teams. One of those teams that was developed in each State is the primary resource for doing a lot of the base chemical analysis on the product that was in the river. That CST team then became the focal point of the collection of all the samples that were done throughout that entire water system.

That was just one aspect. They also were instrumental in helping with the logistics. That was one of the largest water logistics missions that not only has West Virginia run, but that FEMA has run, when you had that many people without water for that duration of time.

But another thing, and just a couple of points with the Guard and the cyber piece, that we had concerns with is the SCADA system that ran the water facility. So we had built the capability during the Boy Scout Jamboree and the intelligence unit of the Guard that did monitoring of social media. So we utilized that capability to pay attention to what was being said, where we were seeing

issues, and also to see if there was anybody out there that was planning to try to take advantage of the situation to do further harm.

We were also concerned of making sure that the plant systems were functional. But then as we started to recover from this event, the water company used a GIS-based application to let people know when the water was safe. As they cleared different zones of the water system and turned the systems back on for public use, we had a concern that someone could hack into that system and change those, so you would have people in zones that weren't safe drinking the water. So we used the Guard for that capability, to monitor that, and to work with the water company on monitoring their SCADA systems as well.

The second point, we had a phishing attack on the State network in West Virginia, and it was what appeared to be a fairly benign attack but turned into a little bit more. But we used some of the capabilities that the Guard has developed to help us go in and look at the systems, identify that, collect some of the, again, the evidence that was used by the FBI to try to track this down. Then in the recovery phase, to actually come in, we had about 4,000 or so computers that were infected, and help our State technology office go in and literally clean those machines and get them back online.

One of our concerns with that is building the depth of the pool of people that can maintain this capability going forward. We are very fortunate, several years ago the West Virginia Legislature passed a piece of legislation that provides college tuition if you join the National Guard. So they will pay for a 4-year college education if you join the Guard, or if you already have a college degree, they will pay for up to a master's degree. So our Guard, working with some of the local colleges, is building a cyber capability or a cyber program with one of those colleges to help build that depth that they are going to need moving forward.

So I think the Guard is an integral part of all of our emergency response. It is directly under the control of the Governor. It keeps that response local. But yet if that response still needs to be broadened out to other States, we are still maintaining that control by the Governor using the EMAC process. I don't know what we would do in West Virginia without those capabilities.

Ms. MCSALLY. Great. Thank you. Were there any interoperability issues in the response to the chemical spill as far as just basic communication?

Mr. GIANATO. In West Virginia we have a State-wide trunked radio system that everybody shares, including the National Guard, so we were all on the same system. We purposely provided the Guard with those types of radios so that they can interact with us.

Ms. MCSALLY. Great. Thank you.

General McGuire, I have just a couple of wrap-up questions here. The first is related to the dual-status commanders. In Sandy, all the dual-status commanders were Guard and not Title 10, so a guardsman leader taking on responsibility of Title 10 is one model, right, so that they have got both of those, but the other model is you bring in an Active-Duty leader who is then responsible for Title 10 and Title 32.

Based on your comments of Capstone and just our experiences of the Active-Duty and their understanding of these roles and responsibilities, are you aware of any Title 10 generals that have been trained for this role, and what are your thoughts and concerns about that?

General MCGUIRE. So the statute—I don't know if it is a statute or a DOD regulation instruction—says that the dual-status commander will be a guardsman by exception, so unless there is a reason not to. So an example that I gave was if the incident occurred on Davis-Monthan, the dual-status commander in that case would be a Title 10 officer. The reason for that legally was there is no way to revert a Title 10 officer and put him under Title 32 or State Active-Duty. Where I currently am serving as the Adjutant General, but I also hold a Major General authorization in the Air Force Reserve where I could be called to duty and go—

Ms. MCSALLY. Right. It is easier to go that way than the other way.

General MCGUIRE. Right. So there is no revision clause. So by and large, all your dual-status commanders. I have been through that NORTHCOM course. We did have Title 10 deputies. The purpose of that is that that Title 10 deputy is to be the guy that really handles what I will call the block and the tackle.

Should you have any kind of significant requirement for legal, Article 15, judicial action, any of that kind of stuff, that they all, ADCON, OPCON, TACON, during the time of that event through this dual-status commander, but you have a Title 32 and a Title 10 deputy that are dealing with that.

But we are synching effort, unity of effort, so mission assignments are going to the right places. We are not sending two engineering battalions to one location and an area where we need an engineering battalion is uncovered once the resources are exhausted.

That said, I will go back to your comment about education and the training piece in the previous hearing. I think there is probably a need for at least some National discussion about the idea that maybe we have, require some of our senior officers to serve a Title 10 duty, not in a command element, but as a 04, 05, 06, kind of like we do in the joint world, in the National Guard so that when they arrive to be the J-5 or the NORTHCOM commander or the NORTHCOM J-3, they are not shocked and surprised by these crazy adjutants general they have to deal with.

That is how Goldwater-Nichols evolved in 1986, and I think some of these events like Katrina and Sandy have kind of led us to the idea that maybe—and that would come from you as a Federal body—to decide that maybe you want to modify statutory language that says something to that effect.

Ms. MCSALLY. Great. Thanks.

My last question is related to the mission you mentioned of using our guardsmen on the Southwest Border. First of all, just for the record, what is the current role that our guardsmen are serving on the Southern Border, and your perspectives of the best roles that they could and should be serving in related to the Southern Border?

Obviously steady-state in a perfect world, DHS has got a better strategy and is securing the Southern Border. We are often calling up the Guard sort of in an emergency, but we seem to have lots of emergencies. If we were just actually to fix the problem, then maybe we wouldn't need to be continuing to call you all to duty.

So what are the best roles, and is it the best use of our guardsmen to be serving in that capacity, both from a capabilities and talents, and then also resources?

General MCGUIRE. Well, I don't know that I can quantify if it is best use. So let me talk about the roles.

In the supported and supporting, we are supporting in this case DHS is the lead Federal agent, not unlike we would support FEMA as the lead Federal agent in a response if we were providing forces.

We have two separate missions that are going in Arizona, primarily focused geographically on the Southwest Border under different authorities. One is the Joint Counter Narcotics Task Force and very clearly-defined rules for use of force, as well as authorities under Title 32, Federally-resourced, Posse Comitatus. Those people are working with and support of the war on drugs, the counter-narcotics piece.

Separate and independent, we have a Southwest Border Task Force that was an outgrowth of the 2007 Operation Jump Start that continues today. Operation Guardian Eye is the name of that. Those roles are unique and distinct, so there is no commingling of your rules for use of force and the rest.

In the former you have guardsmen uniquely designed to help with support of aviation, rotary wing assets, moving people around, moving Customs and Border Enforcement agents around, not really getting on the pointy end of doing the arresting, but helping with logistic support, movement, administration, all kind of things that they need.

But ultimately I think that once DHS says that they are on their feet and ready to go, that is a mission that is very clearly the purview of the Department of Justice and the Department of Homeland Security.

Separately, the Southwest Border mission, big issues there for us are issues like supporting engineering, supporting, again, all of the things with movement of, in this case, Customs and Border Patrol is the lead Federal agent, moving their forces around, helping them with the logistical piece.

As you know, in Arizona we have nearly 400 miles of border. Only 35 miles of it is private land. The balance of it is Federal or State land. So we have a lot of public entities and equities, it is a lot of ground to cover in relatively unpaved terrain. So rotary wing assets is where we primarily focus in the logistical piece. Because we have large rotary wing assets in the Guard it is a great place to do that down in southern Arizona.

Ms. MCSALLY. Thanks. Just one quick follow-up. Do you see is there any role for any ISR assets that are in the Air National Guard as they are doing their training missions for them to actually be communicating and just providing ad hoc support?

General MCGUIRE. I would say our greatest strength would be to help Customs and Border Patrol put up more aircraft in the launch and recovery element that we just stood up down in Fort Huachuca

as the National Guard. We could gain great training benefit to our airmen, hand those aircraft off to trained and qualified enforcement agents so we don't trespass the intel oversight rules on citizens inside this country and let law enforcement agents deal with that.

But that would relieve a huge amount of stress on them because, truthfully, having been qualified as an MQ-1 guy, it is much easier to just drive in a straight line than take off and land. So we do all the take off and landings, and they go out and send out. So we could increase capacity significantly in that area.

That mission though, that mission set where we talk about incident awareness, the IAA kind of thing, I think that is a good example of even in emergency response, your question earlier about the FAA, I think that that is going to be a huge force multiplier and a seam that needs to be explored as to where the statutory limitations are, because as we get ready for wildfire season, I would much prefer to have one of our crews, Guard or DHS, utilizing an overhead asset to prevent something like what happened on Yarnell Hill, where we could have greater situational awareness on changing weather patterns, where the fire is at, those types of things.

Ms. MCSALLY. Great. Thanks. I look forward to following up. Maybe we can connect with CBP on the integration related to the ISR assets. I think that is a great increased capacity as well, so I look forward to following up with you on that.

Okay. Well, thank you, everybody, for your time and your participation today. I really appreciate your valuable insights and experience. I thank the Members for their questions.

The Members of the subcommittee may have some additional questions for the witnesses. We just ask that you respond to those in writing. Pursuant to Committee Rule VII(E), the hearing record will be held open for 10 days.

The subcommittee stands adjourned.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]

APPENDIX

STATEMENT OF THE CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES, NATIONAL EMERGENCY MANAGEMENT ASSOCIATION

CALIFORNIA'S STANDARDIZED EMERGENCY MANAGEMENT SYSTEM (SEMS)

The breadth and magnitude of emergencies that face the State of California are unique in scope and resulted in the development of the Standardized Emergency Management System (SEMS). SEMS is a systematic approach that coordinates the resources of all Californian agencies and departments, from the local level up to larger jurisdictions, to prevent, protect against, respond to, recover from, and mitigate the effects of a disaster. SEMS has been tested, and proven to be effective in response to disasters, regardless of cause, size, complexity, or location and many of its tenets were included in the National Incident Management System (NIMS).

SEMS and NIMS were designed to seamlessly integrate the capabilities of local, State, and Federal Government entities as well as non-Governmental and volunteer organizations, to provide a rapid and effective response to a disaster. It is imperative that any entity that provides resources in response to a disaster do so within the framework of SEMS/NIMS in order to ensure unity of effort, synchronization, and prioritization of resources.

DEFENSE SUPPORT OF CIVIL AUTHORITIES IN CALIFORNIA

In addition to the California National Guard (CNG) under Title 32, Defense Support of Civil Authorities (DSCA) under Title 10 is utilized on a daily basis in coordination with the State, and has prescribed roles within the State's regional catastrophic plans. The CNG is a key partner in Wildland Search and Rescue (SAR) and provides capabilities within SEMS that largely include aviation support when local assets are unavailable or not capable of supporting the mission. Within the State's catastrophic plans and in coordination with the Unified Coordination Group (UCG), CNG provides assistance under the designation of dual-status command.

The most widely-used CNG asset within Wildland SAR are the UH60 Blackhawk and CH47 Chinook airframes. Both of these platforms combine high-altitude performance, heavy-lift capacity and hoist capabilities that facilitate the insertion and extraction of SAR personnel and equipment into remote areas. Fires in California are expected to increase to an unprecedented number in 2015, due to the severity of California's on-going drought. To meet the demands of this volatile scenario, the CNG provides essential support for fire missions, with a requirement to deploy and maintain over a dozen helicopters and be prepared to surge beyond that for a short duration. The National Guard also supports homeland security within the State by participating in regional and State-wide exercises supporting cybersecurity efforts and providing aviation support for local efforts to eradicate illicit drugs.

The CNG and the Department of Defense (DOD) all play vital DSCA roles to support the State's three catastrophic plans for Southern California, the Bay Area, and the Cascadia Subduction Zone. These plans identify the resources and capabilities needed during a catastrophic incident within one construct, and facilitate integration across all levels of government. In some of these scenarios, the shortfalls that cannot be filled using the mutual aid system will be forwarded to the UCG to be filled by Federal assets, which connects the State to DOD resources. In the catastrophic plans, CNG and DOD support under the dual-status commander, a CNG officer, includes supplying emergency water and sanitation needs for response operations, establishing and maintaining functional and interoperable communications for responders, implementing and directing acute care medical response in support of Operational Areas, and operating the DOD Mortuary Affairs Team.

DSCA AND DUAL-STATUS COMMAND (DSC)

The California National Guard and other Title 32 Guard forces available through the Emergency Management Assistance Compact are integral components of California's disaster management capability set. To meet the challenges of catastrophic scenarios, the DOD has developed standing Joint Task Forces (JTFs) under U.S. Northern Command (USNORTHCOM) to roll up multiple capabilities under a single command structure to provide mutual aid support during emergencies.

Historically, these JTFs have not effectively integrated into SEMS without being placed under the responsibility of the dual-status command (DSC), giving the Governor effective control over their activities. In its current state, DSCA doctrine and procedures lack connectivity to SEMS, resulting in disordered response trainings and exercises in California.

The DOD's overly broad interpretation of "Immediate Response" during emergency scenarios effectively circumvents, and at times, undermines the dual-status command structure. This runs counter to the principles of unified command and hinders resource allocation, protocols, and other vital elements of emergency response operations, as well as processes already established and agreed to in our catastrophic plans. In the absence of DSC control over T-10 assets deployed in operational support to a catastrophic scenario, SEMS' effectiveness in prioritizing response across a wide area and multiple jurisdictions is jeopardized.

LOOKING FORWARD: DSCA AND SEMS/NIMS

DSCA must integrate into SEMS/NIMS if it is to effectively contribute to catastrophic incidents in California. When DSCA's policies contradict California law, or violate its civil authority framework, the integrity of SEMS is compromised. There must be greater DOD recognition of, and adherence to, SEMS prior to incidents, during trainings, exercises, and other preparatory activities to ensure that DOD's "Immediate Response" activities are consistent with SEMS. The California Governor's Office of Emergency Services is committed to working with the DOD to ensure there is clarity on the tactical and legal guidelines that need to be factored into a response in California, and it is critical that these issues are addressed before California experiences its next large-scale catastrophe.

