Disaster Response:  
Key Legal Issues for US Northern Command

Kurt Johnson*

Introduction

During Labor Day weekend 2005, Hurricane Katrina had its own impact in Colorado Springs, Colorado. Over 100 men and women worked at a feverish pace in the Joint Operations Center and the Combined Intelligence Fusion Center at US Northern Command (NORTHCOM) as New Orleans residents were threatened by floodwaters creeping up to their rooftop safe havens. Similar scenarios were repeated for days.

As this was the first time within the United States that a natural disaster of this proportion had involved NORTHCOM, unique issues arose regarding the use of Department of Defense (DoD) resources and capabilities in support of hurricane relief operations within the United States. This article discusses NORTHCOM’s missions, authorities and significant legal issues associated with defense support of civil authorities during disaster relief operations.

Dual Missions

NORTHCOM is a unique geographic combatant command as it has dual missions—homeland defense (HLD) and defense support of civil authorities (DSCA)—that must be performed in our nation’s homeland. The legal authority for

* Captain, JAGC, US Navy.
Disaster Response: Key Legal Issues for US Northern Command

NORTHCOM’s HLD mission is rooted in Article II, Section 2 of the US Constitution: the President’s authority as Commander-in-Chief. The legal authority for the DSCA mission is based in statute. An example is the Stafford Act.¹

Legal Authorities

Stafford Act

The Stafford Act is the primary legal authority for federal emergency and disaster assistance to state, local and tribal governments. Under the Act, federal disaster relief may be initiated in four circumstances:

a. Presidential declaration of a major disaster² at the request of a governor,³

b. Presidential declaration of an emergency⁴ at the request of a governor,⁵

c. Secretary of Defense (SECDEF) utilization of DoD resources, upon request of a governor and at the direction of the President, to perform emergency work for the preservation of life and property during the immediate aftermath of an incident (before the President makes a major disaster or emergency declaration),⁶ or

d. Presidential declaration of an emergency when the affected area is one in which “the United States exercises exclusive or preeminent responsibility and authority” under the Constitution or laws of the United States.⁷ The President may make this declaration on his own volition without a governor’s request.

In the first two circumstances, the Stafford Act requires that the governor of an affected state request a presidential declaration of a major disaster or emergency. The governor’s request must be based on a finding that the disaster “is of such severity and magnitude that effective response is beyond the capabilities of the state and the affected local governments and that Federal assistance is necessary.”⁸ The governor must certify that he or she has executed the state’s emergency plan and will comply with the cost-sharing requirements of the Stafford Act. The President may then declare that a major disaster or emergency exists.

Upon the declaration of a major disaster or emergency, the governor and the Federal Emergency Management Agency (FEMA) Regional Director execute a FEMA-state agreement.⁹ The agreement describes the incident, the period for which assistance will be made available, and the type and extent of the federal assistance. It also contains the commitment of the state and local government(s) with
respect to the amount of funds to be expended. An emergency is an event that does not qualify under the definition of major disaster. Assistance authorized by an emergency declaration is limited to immediate and short-term assistance essential to save lives, to protect property and public health and safety, or to lessen or avert the threat of a catastrophe. Total assistance provided in any given emergency declaration may not exceed five million dollars, except when FEMA determines that continued emergency assistance is immediately required; there is a continuing and immediate risk to lives, property, public health and safety; and necessary assistance will not otherwise be provided on a timely basis.

The third circumstance occurs in the immediate aftermath of an incident which may ultimately qualify for Stafford Act assistance but before the President actually makes a major disaster or emergency declaration. The governor may request DoD resources to perform emergency work on public and private lands that is essential for the preservation of life and property. "Emergency work" is defined as including "clearance and removal of debris and wreckage and temporary restoration of essential public facilities and services," but may also include search and rescue, emergency medical care and reduction of immediate threats to life, property and public health and safety.

The fourth circumstance that initiates federal disaster relief does not require a request from a governor. The President may declare an emergency and provide federal assistance to the governor when the affected area is one in which "the United States exercises exclusive or preeminent responsibility and authority." The President is required to consult the governor, if practicable, to determine if an emergency exists. President Clinton exercised this authority in the aftermath of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City. This was the first and only use of this authority since its inception in 1988 and was likely used because the Murrah was a federal building housing multiple federal agencies.

In comparing the power of the federal government with that of the states in terms of disaster response and assistance, one must consider the Tenth Amendment to the US Constitution, which reads, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." State and local governments derive their authority to respond to disasters and emergencies and to enforce law from their "police power," which is inherent in the sovereignty of every state and is reserved to the states through the Tenth Amendment. The Stafford Act affirms the primacy of the state's role in disaster response, because federal assistance is premised on a request from the state governor and is not imposed on the state, except in those cases where the federal government exercises exclusive or preeminent authority over the area affected.
Disaster Response: Key Legal Issues for US Northern Command

NORTHCOM's dual missions present an interesting spectrum of authority within which to act. The line between civil support and homeland defense is not easily distinguishable and often one leads into, or overlaps with, the other. In responding to a major disaster or emergency, authorities must decide if DoD's role is one of civil support or homeland defense, which of course depends on the nature of the major disaster or emergency. One can think of a number of scenarios where this determination could go either way. Without limiting DoD’s national defense mission, Homeland Security Presidential Directive (HSPD) 5 establishes a presumption that domestic incidents including “terrorist attacks, major disasters, and other emergencies” shall be addressed by the US government in a single, comprehensive response, with the Secretary of Homeland Security acting as principal federal official and coordinating all federal operations in response and recovery.19

National Response Plan
Where DoD’s civil support mission is clear, it begins with the National Response Plan (NRP).20 Under the NRP, incidents begin as local events with local police, fire and emergency medical services as the first responders. If these first responders are overwhelmed, they request assistance from the governor of the state. The governor may choose to deploy his/her state’s National Guard to assist, and may also rely on assistance from other states if an Emergency Management Assistance Compact (EMAC) exists.

An EMAC is an agreement among member states that outlines the legal agreements and procedures for providing assistance to other member states in the event of an emergency or disaster. It was established in 1996, has weathered the storm when put to the test, and stands today as the cornerstone of mutual aid. The EMAC mutual aid agreement and partnership between states exist because from hurricanes to earthquakes, wildfires to toxic waste spills, and terrorist attacks to biological and chemical incidents, all states share a common enemy: the threat of disaster.

Since being ratified by Congress and signed into law in 1996, 50 states, the District of Columbia, Puerto Rico and the Virgin Islands have enacted legislation to become members of EMAC. EMAC is the first national disaster-relief compact to be ratified by Congress since the Civil Defense and Disaster Compact of 1950.

The strength of an EMAC and the quality that distinguishes it from other plans and compacts lies in its governance structure, its relationship with federal organizations, states, counties, territories and regions, and the ability to move just about any resource one state has to assist another state, including medical resources.

If the state is overwhelmed or the governor determines specific assistance is needed from the federal government, the governor will call the President or his staff and request a declaration of major disaster or emergency. The President will
Kurt Johnson

turn to the Secretary of Homeland Security, who will take the appropriate action for incident management. The primary federal agency, most often FEMA, may request military support through the Office of the Secretary of Defense. The Joint Director of Military Support (JDOMS) will evaluate the request based on legality, lethality, risk, readiness, budget and appropriateness. If approved, SECDEF will give the mission to NORTHCOM and NORTHCOM will support the primary federal agency as directed. It should be clearly understood that the National Response Plan is only a plan. It does not provide statutory authority under which DoD may expend federal funds and take action.

Posse Comitatus Act
Although civil support within the homeland is not new to the military, the nature of support needed during the 2005 hurricane season presented some unique issues for NORTHCOM. Whenever military operations are conducted within the homeland, authorities must consider the Posse Comitatus Act (PCA). Since the Constitution leaves police power to the states, the PCA ensures that the Army and Air Force are not used as a police power. The PCA applies to the Navy and Marine Corps by DoD policy. The PCA restrictions essentially prohibit the direct, active participation of military forces in enforcing civil criminal laws. This includes prohibitions against arrest, search and seizure, and detention. The PCA does not apply to the Coast Guard. It also does not apply to the National Guard in state active duty (SAD) or Title 32 (Federally Funded) statuses. Congress has provided many exceptions to the PCA, most notably the Insurrection Act. Although there has been much discussion of amending the PCA, NORTHCOM’s position is that its ability to execute its mission is not adversely affected by PCA restrictions.

Enforcement of the Laws to Restore Public Order
The John Warner National Defense Authorization Act for Fiscal Year 2007 (NDAA FY07) changed the name of chapter 15 of Title 10 from “Insurrection” to “Enforcement of the Laws to Restore Public Order.” Formerly and commonly referred to as the Insurrection Act statutes, 10 US Code 331-333 provides statutory exceptions to the PCA that could involve the execution of NORTHCOM’s civil support mission. During Hurricane Katrina, early news coverage depicted a city of lawlessness: police were gone, looting was common and violence was rampant. This news coverage led to discussions about whether the President should invoke the Insurrection Act. As the Insurrection Act statutes existed at the time of the Hurricane Katrina disaster, it did not appear that legal authority existed for the President to invoke the Insurrection Act.
Disaster Response: Key Legal Issues for US Northern Command

The Insurrection Act statutes describe three triggers that allow the President to use military force to suppress insurrections. The first trigger is a state request, as was done in the 1992 Los Angeles riots. The second trigger is when unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States make it impracticable to enforce federal law. This was done in the 1957 and 1963 public school desegregation cases. The third trigger, now expanded as a result of language in the Fiscal Year 07 National Defense Authorization Act, allows the President to restore public order and enforce the laws of the United States when, as a result of a natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or other condition in any State or possession of the United States, the President determines that domestic violence has occurred to such an extent that the authorities of the State or possession are incapable of maintaining public order, and such violence results in a condition that deprives the people of constitutional rights or obstructs execution of US laws. The President may also do so to suppress in a state any insurrection, domestic violence, unlawful combination, or conspiracy, if such insurrection, violation, combination or conspiracy results in a condition that deprives the people of constitutional rights or obstructs execution of US laws.

Where the President invokes the “Laws to Restore Public Order” because public order cannot be maintained and the violence deprives people of constitutional rights, the President may federalize the National Guard and Reserve for not more than 365 days. He may also direct SECDEF to provide supplies, services and equipment to affected persons (independent of the normal process under the Stafford Act).

Although the new provisions of the NDAA FY07 expanded the President’s authority, the provisions would not necessarily have completely addressed the “lawlessness” situation that existed in New Orleans during Hurricane Katrina. Under the new provisions, the President would have had two significant hurdles to overcome before he could invoke the “Enforcement of the Laws to Restore Public Order” provisions that now exist and send in Title 10 troops over the objection of or absent a request from the governor. While the first hurdle would have been met (authority to act in public emergencies such as natural disaster) in the absence of effective government, the second hurdle (finding deprivation of constitutional rights) would arguably still have presented problems. Although Katrina-like situations are now clearly contemplated in statute, the President must still find an associated deprivation of constitutional rights. No President since 1963 (public school desegregation) has been willing to make such a finding.
Unity of Effort

As stated earlier, the federal government's ability to respond to an emergency is constrained by the constitutional provisions which reserve police power to the states. The states have authority to call forth militias (the National Guard) to suppress insurrections, quell civil disturbances or respond to natural disasters and other catastrophic events. Given that each state sovereign has its own militia, it is impossible for Title 10 forces in the homeland to achieve unity of command with a state’s militia. However, unity of effort is a goal that can be achieved through improved communication and coordination. The “Forces for Unified Commands” memorandum\textsuperscript{29} envisions the establishment of a “coordinating authority” between Title 10 forces and non-federalized National Guard forces so that this unity of effort may be achieved. This authority is not command authority or authority to compel agreement, but rather authority delegated to a commander for coordinating specific functions and activities involving two or more forces. It is an authority to require consultation. This type of coordination would give SECDEF insight into how Title 32 funds are spent and give NORTHCOM and the National Guard situational awareness of each other’s missions, locations, platforms, capabilities and rules for the use of force, promoting unity of effort among all forces. This coordination could be a condition precedent to SECDEF approval of Title 32 funding.

Dual-Status Commander

Another way to achieve unity of effort is through the establishment of a dual-status commander, a command arrangement discussed, but not used, during the 2005 hurricane season. There are two types of dual-status commanders. One involves providing a Title 10 officer a commission in a state National Guard thereby allowing him or her to exercise command and control over federal status (Title 10) forces and state status (Title 32/SAD) National Guard forces. The other involves placing a National Guard officer on Title 10 orders, while allowing that officer to retain his or her state authority, thereby enabling unity of command of both federal and state status forces.

32 US Code 315 authorizes the detail of regular members of the Army and Air Force to duty with a state National Guard by the Secretary of the Army or Secretary of the Air Force. With permission of the President, it allows an Army or Air Force officer to accept a commission in the National Guard if such is offered by the governor of the respective state. This authority has been used to authorize Title 10 officers to exercise command and control over National Guard units.

32 US Code 325 authorizes a National Guard officer familiar with the state and local area of operations to command in both a federal and state status. This authority was used in the 2004 G8 Summit, the 2004 Democratic and Republican national
conventions and Operation Winter Freeze, a five-month NORTHCOM mission in late 2004 and early 2005, which occurred on the northeast border of the United States. This is also the command arrangement that will be used for the Ground Based Midcourse Missile Defense units of the Colorado and Alaska National Guards.

Both options provide unity of effort, rather than unity of command, allowing both federal and state military forces to enhance their situational awareness.

There is no formal approval process for either situation. It usually begins with informal coordination between the state and NORTHCOM. Typically, action officers at NORTHCOM and the National Guard discuss various courses of action with a recommendation for the use of a dual-status commander. Then the state National Guard staff and NORTHCOM staff determine whether to seek approval from their respective chains of command. In all four 2004 events in which dual-status National Guard officer arrangements were approved, the governor sent an approval package, including a signed Memorandum of Agreement, to the President and/or SECDEF for signature (for certain events, the President has delegated approval to SECDEF).

The dual-status commander arrangement does not simultaneously authorize the use of Title 32 funding for National Guard forces for operational missions. Title 32 funding approval is a separate process. Moreover, this arrangement does not “dual status” the forces or staff, whether federal or state status, commanded by the dual-status commander. The dual-status commander has two reporting chains and must consider the implications of the different rules and restrictions for each force under his or her command. It is likewise important that staff members, whether Title 10 or National Guard, understand their separate roles and missions.

**DoD as Lead Federal Agency**

Could DoD ever be tasked by the President to be the lead federal agency in a catastrophic event? Clearly, the Homeland Security Act of 2002 confers statutory responsibility for federal response to catastrophic incidents to the Department of Homeland Security (DHS). One could argue that DoD could lead a component of the federal response as long as DHS maintained overall responsibility for the response as a whole. One could also conceive of a situation in which an incident is of such magnitude as to jeopardize national security, such that the President, under his Article II authority, could place DoD in the lead.

Conceptually, there is a critical void in the immediate aftermath of a major disaster (for discussion purposes, the first 48–72 hours after a disaster). Conceivably, local responders are incapacitated or busy attending to their own families; state assistance is forthcoming, but will take time to assemble sufficient National Guard forces and other responders into effective units; the governor has not yet requested

---

284
federal assistance or, if requested, it will take a short period of time for the National Response Plan to gear up and provide that assistance. In the meantime, American lives are at risk. DoD has the capability to respond quickly with well-trained units in constant communications unaffected by the disaster, and to sustain itself indefinitely. The overarching question is whether DoD has legal authority to fill that early and critical void.

Immediate Response Authority
There are situations that allow DoD to respond without prior approval from the chain of command. When imminently serious conditions resulting from any civil emergency or attack exist and time does not permit prior approval from higher headquarters, local military commanders and responsible officials of other DoD components are authorized to take necessary and immediate action to respond to requests of domestic civil authorities in order “to save lives, prevent human suffering or mitigate great property damage.” Such actions are generally referred to as “immediate response.”

Ordinarily, assistance to civilian authorities is provided on a cost reimbursement basis. However, it should not be delayed or denied because of the inability or unwillingness of the requester to make a commitment to reimburse DoD. Additionally, those providing immediate response are required to notify the National Military Command Center (NMCC), through the chain of command, as soon as practical of the request for assistance, the nature of the response and any other relevant information related to assistance provided.

Generally, notice should reach the NMCC within hours of the decision to provide assistance. Immediate response has generally been contemplated as assistance provided in response to a natural disaster or other catastrophic incident. The assistance provided is in support of local officials and at their request. This response is generally limited in terms of time and geographic proximity of the commander and/or the requested capability to the incident.

Incident Awareness and Assessment
One of the most sensitive issues in the homeland is the use of intelligence assets during domestic operations. Consider the ramifications of flying a U-2 reconnaissance plane over the Gulf Coast during hurricane disaster relief operations. Beyond perceptions, one must consider if there is authority to use intelligence capabilities for non-intelligence missions (such as search and rescue and damage assessment) following a natural disaster. “Incident Awareness and Assessment” (IAA) is the term used to describe the use of intelligence assets, specifically intelligence, surveillance and reconnaissance (ISR) assets, in support of disaster relief operations.
Foreign intelligence (FI) and counterintelligence (CI) are the only authorized "intelligence activities" of the DoD intelligence community and must be conducted consistent with DoD Directive 5240.1 and DoD 5240.1-R.33 In essence, this means that whenever DoD conducts an "intelligence activity," there must be a foreign nexus, as required by the definitions of foreign intelligence and counterintelligence. DoD intelligence community officials have opined that SECDEF may approve use of DoD intelligence component capabilities for missions "other than intelligence activities" because the SECDEF has inherent authority to use any assets or personnel within the DoD to complete a DoD mission. In those instances, the mission must be a valid DoD mission, and SECDEF must approve both the mission and specific use of the DoD intelligence component capabilities.

Essentially, in order to use DoD intelligence component capabilities (personnel, units, planning, collection, analysis, production) for non-intelligence activities, there must be a Request for Forces (RFF) submitted through the command to the Joint Staff for review and approval by SECDEF. The request must identify the mission and specify the DoD intelligence component capability requested. The resulting execute order will be approved by SECDEF and specify what DoD intelligence component capabilities may be used and any operational parameters or limitations on the use of that capability.

These procedures give SECDEF the flexibility to use DoD assets for dual missions. For example, during a hurricane disaster support mission, the DoD intelligence components could be conducting intelligence activities (FI and CI) under existing authorities. Additionally, DoD intelligence component capabilities could be used for a non-intelligence mission by doing planning, tasking, analysis and production in support of search and rescue (SAR) and damage assessment. The second mission could involve a Request for Assistance (RFA) from a primary federal agency to DoD. In this situation, SECDEF approval would authorize the use of intelligence assets for non-intelligence purposes. Mission direction would be coordinated with the primary federal agency. Additionally, the RFA process is a "fee for service" operation. The primary federal agency would agree to pay for the cost of the IAA employment.

Leaders, at all levels, frequently seek to build situational awareness. Building situational awareness requires data to be collected by a combination of satellite, airborne, and ground sensors. The key is to create a means to bring all of this disparate data together into one coherent picture for decisionmakers and planners. The amount and type of data required differs depending on whether the leader is making strategic, operational or first responder decisions. The requirement for
situational awareness must be evaluated carefully, so that IAA assets are efficiently and effectively used.

**Sensitive Information**

The use of information about US persons and non-DoD persons and organizations is restricted depending on the mission of the DoD component involved. During disaster relief operations, force protection is always a concern when sending troops into a joint operating area. While this is true whether operating overseas or in the homeland, the rules in the homeland are more restrictive. Sensitive information falls into two major categories. The first category deals with information on US persons subject to intelligence oversight (IO) rules. The rules for this category of information apply only to DoD intelligence components. The second category deals with information concerning the activities of persons and organizations not affiliated with DoD. The rules for this category apply to everyone except DoD intelligence components. The policy set forth in a 1980 directive, DoD Directive 5200.27, applies.

The general rule for this second category is that collecting, reporting, processing or storing information concerning individuals or organizations not affiliated with DoD is not permitted. This includes non-DoD persons/organizations within the 50 states, the District of Columbia, Puerto Rico, US territories and non-DoD affiliated US citizens anywhere in the world. There are exceptions to the general rule. Information may be gathered if it is essential to the accomplishment of the following defense missions:

- Protection of DoD functions and property. This exception encompasses threats to DoD military and civilian personnel and defense activities, installations and property. Only the following activities justify acquisition of non-DoD persons/organizations information:
  - Subversion of loyalty, discipline or morale of DoD military or civilian personnel by encouraging violations of law, disobedience of orders or disruption of military activities;
  - Theft of arms, ammunition or equipment; or destruction or sabotage of DoD facilities, equipment or records;
  - Unauthorized demonstrations on DoD active or reserve installations;
  - Direct threats to DoD military/civilian personnel in connection with their duties or to other persons authorized protection by DoD resources;
  - Activities endangering facilities that have classified defense contracts or that have been officially designated as “key defense facilities”; and
DiStl5ter

Response: Key Legal Issues for US Northern Command

- Crimes for which DoD has responsibility for investigating or prosecuting.
- Personnel security. Investigations regarding clearances for members of DoD and DoD applicants and persons needing access to classified information.
- Operations related to civil disturbances. If specifically authorized by SECDEF and there is a distinct threat of civil disturbance exceeding the law enforcement capability of state and local authorities.

Information collected under DoD Directive 5200.27 authority must be destroyed within 90 days unless retention is otherwise authorized. The dilemma is drawing the line between information needed for force protection purposes and information that is more appropriately handled by local law enforcement.

International Assistance
The United States has extensive experience providing assistance to other nations in the wake of disasters, but there is little recent precedent for the United States to receive international assistance following a homeland disaster. During Hurricane Katrina, many foreign countries offered assistance. For example, Canada sent ground troops, Mexico sent a mobile kitchen to provide food, and Germany and Denmark offered water pumps. Federal regulations, however, hindered the provision of the assistance in some cases. US Department of Agriculture regulations prevented the use of food from foreign nations whose health regulations did not meet US standards. In addition, the process to accept these “gifts” of assistance often meant assistance did not come as quickly as it was needed. In the case of foreign troops on the ground assisting in relief efforts, issues regarding the rules under which they would operate arose. Examples include rules for the use of force and medical credentials. The United States clearly has to resolve these issues as the paradigm of international assistance has changed.

Conclusion
As new hurricane seasons approach, NORTHCOM will continue to grapple with these legal issues and others that arise from various manmade and natural disaster relief situations. While homeland defense is NORTHCOM’s number one responsibility, the mission to support civil authorities is very important, and often at the forefront of NORTHCOM’s daily activities. NORTHCOM is called upon on a regular basis to assist other federal agencies in responding to natural and man-made disasters at the direction of the President or the Secretary of Defense. Because DoD support is often unique, NORTHCOM will continue to coordinate with federal,
Kurt Johnson

state and local authorities to provide assistance, as directed, whenever and wherever it is needed.

Notes

2. "Major disaster" is defined as any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought) or, regardless of cause, any fire, flood or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments and disaster relief organizations in alleviating the damage, loss, hardship or suffering caused thereby. 42 US Code sec. 5122(2) (2000).
4. "Emergency" is defined as any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. 42 US Code sec. 5122(1) (2000). Such response should not be confused with Emergency Response authority discussed in DoD Directive 3025.12, infra note 32.
15. See US Code sec. 5170b(a)(3) (2000), which addresses "work and services to save lives and protect property."
16. "The President may exercise any authority vested in him by section 5192 of this title [emergency declaration] or section 5193 of this title [amount of assistance] with respect to an emergency when he determines an emergency exists for which the primary responsibility for the response rests with the United States because the emergency involves a subject area for which, under the Constitution or the laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. In determining whether or not such an emergency exists, the President shall consult the Governor of any affected State, if practicable. The President's determination may be made without regard to subsection (a) of this section [i.e., a request for assistance from the Governor]." 42 US Code sec. 5191(b) (2000).
17. Id.
Disaster Response: Key Legal Issues for US Northern Command


20. The National Response Plan of May 25, 2006 establishes a comprehensive all-hazards approach to enhance the ability of the United States to manage domestic incidents. It forms the basis of how the federal government coordinates with state, local and tribal governments and the private sector during incidents. The NRP is available at http://www.dhs.gov/xlibrary/assets/NRP_FullText.pdf.


23. The PCA does not apply to the Coast Guard. Jackson v. Alaska, 572 P.2d 87 (Alaska 1977). This is most clear in terms of the Coast Guard’s Title 14 (Armed Forces) operations. PCA limitations are also inapplicable to the Coast Guard’s Title 10 (Coast Guard) authority because the PCA, on its face, does not reference or limit the Coast Guard. Additionally, the PCA makes an explicit exception “in cases and under circumstances expressly authorized by … Act of Congress,” Congress has expressly given the Coast Guard certain federal law enforcement duties by statute, e.g., 14 US Code sec. 2 and 89 (2000). While a DoD directive places PCA-like restrictions on the Navy and Marine Corps, the Coast Guard is not subject to this regulation. Department of Defense, DoD Directive 5525.5, DoD Cooperation with Civilian Law Enforcement Officials (1986), available at http://www.fas.org/irp/doddir/dod/d5525_5.pdf. The Coast Guard would only be subject to DoD and Department of the Navy policy limitations if made “a service in the Navy” by Presidential order or in a declaration of war by Congress. 14 US Code sec. 3 (2000).


29. The “Forces for Unified Commands” is a memorandum in which the Secretary of Defense documents his direction for the assignment of forces to combatant commands and to US Element North American Aerospace Defense Command.

30. When performing duty pursuant to Title 32, US Code, a National Guard member is under the command and control of the state but paid with federal funds.


(1982), available at http://www.dtic.mil/whs/directives/corres/pdf/52401r_1282/p52401r.pdf, contains detailed procedures to enable DoD intelligence components to carry out their assigned functions while ensuring their activities that affect US individuals are carried out in a manner that protects the constitutional rights and privacy of such persons.

34. Executive Order No. 12,333, 46 Federal Register 59,941 (Dec. 4, 1981); DoD Directive 5240.1, supra note 33; and DoD 5240.1-R, supra note 33, IO rules apply.