

This report is a story about federal, state, and local emergency response plans, and how they were or were not implemented before and after Katrina. Where there were problems, we asked why. Where even flawless execution led to unacceptable results, we returned to questioning the underlying plans.

What this Select Committee has done is not rocket science. We've gathered facts and established timelines based on some fairly rudimentary but important questions posed to the right people in both the public and private sectors. What did you need and what did you get? Where were you in the days and hours right before, during, and after the storm? Who were you talking to? What were you doing? Does that match what you were *supposed* to be doing? Why or why not?

In other words, the Select Committee has matched what was *supposed to happen* under federal, state, and local plans against what *actually happened*. Our findings emerged from this process of matching. In this lengthy Background chapter, we beg your indulgence. We know that most readers do not care about acronyms or organizational charts, about authorities and capabilities or the concepts of "push" versus "pull." We know you simply want to know who was supposed to do what, when, and whether the job got done. And if it didn't get done, you want to know how we are going to make sure it does the next time.

We provide this background on the framework for emergency management to set the stage for the story we will tell. To understand the *failure of initiative*, we need to first explain the tools that were available to so many.

## National framework for emergency management

### General role of FEMA, creation of DHS, and FEMA's absorption into the department

The Federal Emergency Management Agency (FEMA) was established in 1979 in an effort to consolidate many of the federal policies related to the management of emergencies, including **preparedness, mitigation, disaster response, and recovery**.<sup>1</sup> Prior to FEMA's creation, through a mix of legislation and executive decisions, responsibility for federal emergency assistance as well as the types of assistance and eligibility underwent numerous changes. For example, administrative responsibility for assistance was shifted among a variety of federal departments, agencies, and the White House. In addition, the kinds of assistance the federal government provided and the types of organizations eligible were increased a number of times by, for example, adding provisions for disaster relief to small businesses and agricultural producers. By the late 1970s, these authorities and administrative changes had "developed into a complex mix of federal emergency management missions" with which state, local, and federal officials were dissatisfied, characterizing the situation as an inefficient maze of federal policies and responsible administrative entities.<sup>2</sup>

In 1978, following the incident at Three Mile Island, President Carter proposed reorganizing many of the emergency operational and coordination functions that had become dispersed throughout the federal government. In a reorganization plan submitted to Congress, the President proposed creating FEMA to administer many of the federal policies related to disasters, doing so based on a number of key principles:<sup>3</sup>

- Federal authorities to anticipate, prepare for, and respond to major civil emergencies should be supervised by one official responsible to the President and given attention by other federal officials at the highest levels;
- An effective civil defense system requires the most efficient use of all available resources (later embodied in the "all hazards" approach, through which civil defense capabilities would be available for any disaster, regardless of cause);
- Whenever possible, emergency responsibilities should be extensions of the regular missions of federal, state, and local agencies (later embodied in federal response plans through which FEMA coordinates and plans the assistance other federal agencies provide rather than providing the assistance directly);
- Federal intervention should be minimized by emphasizing hazard mitigation and state and local preparedness; and,

- Federal hazard mitigation activities should be closely linked with emergency preparedness and response functions.

The President’s reorganization plan took effect in April 1979 through two executive orders which created FEMA and assigned the various responsibilities previously dispersed throughout a number of other agencies.<sup>4</sup> These included, among others, the coordination of civil defense, civil emergency planning, and federal disaster relief;



federal disaster preparedness; federal flood insurance authorities; dam safety; natural and nuclear disaster warning systems; and, coordination of preparedness and planning to reduce the consequences of major terrorist incidents.<sup>5</sup> To meet these responsibilities, FEMA focused on (1) enhancing the capability of state and local governments to respond to disasters; (2) coordinating with other federal agencies that provide resources to respond to disasters;

(3) giving federal assistance directly to citizens recovering from disasters; (4) granting financial assistance to state and local governments; and, (5) providing leadership for hazard mitigation through grants, flood plain management, and other activities.<sup>6</sup>

### FEMA’s transfer to the Department of Homeland Security and role in disaster response

In 2002, Congress created the Department of Homeland Security (DHS) and placed FEMA within the new department. Specifically, the Homeland Security Act of 2002 (HSA) established in DHS the Emergency Preparedness and Response (EPR) Directorate, placing FEMA (except for its terrorism preparedness functions) into EPR along with a number of additional entities and functions.<sup>7</sup> For example, EPR also assumed responsibility for the Department of Health and Human Services’ Office of Emergency Preparedness, which manages the National Disaster Medical System, a network of federal, state, local, private sector, and civilian volunteer medical and support personnel who augment local medical providers during disasters.<sup>8</sup> In addition to these functional responsibilities, the HSA assigned to EPR responsibility for:<sup>9</sup>

*Providing federal assistance in response to requests of the states (or local governments via the states) is often referred to as a “pull” system.*

- promoting the effectiveness of emergency responders;
- supporting the Nuclear Incident Response Team (NIRT) through standards, training exercises, and funding;
- managing, overseeing, and coordinating federal response resources;
- aiding disaster recovery;
- creating an intergovernmental national incident management system;
- consolidating existing federal response plans into one plan;
- ensuring emergency responders have interoperative communications technology;
- developing a coordinated strategy for public health-related activities; and
- using private sector resources.

### Federal vs. state and local roles

#### Pull vs. push system

The federal government responds to most natural disasters when the affected state(s) requests help because the disaster is of such severity and magnitude that an effective response is beyond the capabilities of the state and local governments.<sup>10</sup> This system in use for most disasters — providing federal assistance in response to requests of the states (or local governments via the states) — is often referred to as a “pull” system in that it relies on states to know what they need and to be able to request it from the federal government.<sup>11</sup>

In practice, states may make these requests before disasters strike because of the near certainty that federal assistance will be necessary after such an event (e.g., with hurricanes) or, afterwards, once they have conducted preliminary damage assessments and determined that their response capabilities are overwhelmed. In either case, the resources the federal government provides in any disaster response are intended to supplement state

and local government resources devoted to the ongoing disaster relief and recovery effort.<sup>12</sup>

In certain instances, however, the federal response may also be considered a “push” system, in which federal assistance is provided and/or moved into the affected area prior to a disaster or without waiting for specific requests from the state or local governments.<sup>13</sup> As discussed below, DHS’s National Response Plan includes a component — the Catastrophic Incident Annex — that outlines the kinds of events that can cause damage so massive that first responders, local governments, and state governments are unable to request — or “pull” — federal assistance in the immediate aftermath of the incident, creating a situation in which “pushing” the federal resources might be necessary.

### EMAC system to supplement state and local capabilities

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Prior, or in addition, to seeking assistance from the federal governments, states are set up to help each other when disasters or emergencies overwhelm their capacity. States do so through participation in the Emergency Management Assistance Compact (EMAC), an interstate mutual aid agreement among member states to provide assistance after disasters overwhelm the affected state’s capacity. Congress approved the creation of EMAC in 1996, building on the earlier efforts of the Southern Regional Emergency Compact that Florida and 16 other states created in 1993 after experiencing dissatisfaction with the state and federal response to Hurricane Andrew in 1992.<sup>14</sup> EMAC provides the legal structure for states to request assistance from one another as well as a menu of resources, such as temporary shelters and cargo aircraft, which may be available from other member states. Importantly, this assistance can, and often does, come from participating states’ National Guards.<sup>15</sup> The National Emergency Management Association, the professional association of state emergency managers, administers the compact.<sup>16</sup>

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## Federal authorities and capabilities

When an incident overwhelms, or is likely to overwhelm, state and local resources, the Stafford Act authorizes the President, in response to a request from the governor of the affected state, to issue two types of declarations— emergency or major disaster.

### Emergency declaration

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The Stafford Act defines an emergency as “any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.”<sup>17</sup> An emergency declaration is more limited in scope than a major disaster declaration; generally, federal assistance and funding for emergencies are provided to meet a specific need or to help prevent a major disaster from occurring.<sup>18</sup> Emergency assistance under such a declaration may include: grants to state and local governments for debris removal; direct assistance (grants) to individuals and households for temporary housing and other needs; and, assistance to states in distributing medicine and food.<sup>19</sup>

### Major disaster declaration

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A major disaster can result from a hurricane, earthquake, flood, tornado or other incident that clearly overwhelms the ability of state or local governments to respond on their own. A presidential declaration of a major disaster usually occurs after local and state governments have responded with their own resources (such as the National Guard), conducted damage assessments to determine losses and recovery needs, and determined that the disaster is of such severity and magnitude that an effective response is beyond

the capabilities of the state and local governments.<sup>20</sup> Such a declaration sets into motion federal assistance to and support of state and local response efforts as well as long-term federal recovery programs.<sup>21</sup>

## Principles of the National Response Plan and the National Incident Management System

Broadly speaking, the overall structure for the federal response to most disasters consists of the National Response Plan and National Incident Management System. The President issued Homeland Security Presidential Directive (HSPD)-5 in February 2003, directing DHS to develop a new plan for responding to emergencies (regardless of cause). Specifically, HSPD-5 required DHS to establish a single, comprehensive approach to the management of emergency events, whether the result of terrorist attacks or large-scale natural or accidental disasters.<sup>22</sup> According to DHS, the intent of this plan is to align federal coordination structures, capabilities, and resources into a unified, all-discipline, and all-hazards approach to domestic incident management.<sup>23</sup>

To implement HSPD-5, DHS developed the National Incident Management System (NIMS) and the National Response Plan (NRP). In short, the NRP defines what needs to be done in a large-scale emergency event and the NIMS defines how to manage it:

■ The NRP describes the structure and mechanisms for coordinating federal support during emergencies (or exercising direct federal authority).<sup>24</sup> It uses the framework of the NIMS to integrate federal government domestic prevention, protection, response, and recovery plans into a single operational plan for all hazards and all emergency response disciplines. The NRP describes operational procedures for federal support to state, local, and tribal emergency managers and defines situations in which federal authorities are to provide support and when federal authorities are to assume control. The NRP organizes capabilities, staffing, and equipment resources in terms of functions that are most likely to be needed during emergencies, such as communications or urban search and rescue, and spells out common processes and administrative requirements for executing the plan. DHS issued the NRP in December 2004 and used it for the first time in the preparation for and response to Hurricane Katrina.

■ NIMS consists of six major components of a systems approach to domestic incident management: command and management, preparedness, resource management, communications and information management, supporting technologies, and ongoing management and maintenance. According to DHS, NIMS “aligns the patchwork of federal special-purpose incident management and emergency response plans into an effective and efficient structure.”<sup>25</sup> To do so, it defines the roles and responsibilities of federal, state, and local first responders during emergencies and establishes a core set of concepts, principles, terminology, and organizational processes to enable effective, efficient, and collaborative emergency event management at all levels. The concepts, principles, and processes underlying the NIMS are intended to improve the ability of different jurisdictions and first-responder disciplines to work together in various areas, such as command and communications.<sup>26</sup> NIMS, according to DHS, is based on an “appropriate balance of flexibility and standardization.” It allows government and private entities to use an adjustable national framework to work together managing domestic incidents, no matter their cause, size, location, or complexity and, while doing so, provides a set of standardized organizational structures to improve interoperability among jurisdictions.<sup>27</sup> Beginning in federal fiscal year 2005, state and local governments were required to adopt NIMS in order to receive federal (DHS) preparedness grants or contracts.<sup>28</sup>

The NRP consists of 5 components:<sup>29</sup>

1. The *base plan* describes the overall structure and processes of a national approach to domestic incident management that integrates the efforts and resources of federal, state, local, tribal, private-sector, and non-governmental organizations. It includes planning assumptions (e.g., state and local capabilities may be overwhelmed), roles and responsibilities, a concept of operations, incident management actions, and instructions for maintaining and periodically updating the plan.
2. *Appendices* provide relevant, detailed supporting information, such as statutory authorities and a compendium of national interagency plans.



FEMA

3. *Support Annexes* provide guidance and describe the functional processes and administrative requirements for meeting various plan objectives, such as logistics management and coordination with the private sector (including representatives of critical infrastructure resources).

4. *Emergency Support Annexes* spell out in detail the missions, policies, structures, and responsibilities of federal agencies for coordinating resource and programmatic support to state, local, and tribal governments as well as other federal agencies. Each Emergency Support Function (ESF) has a coordinator with ongoing responsibilities throughout the incident as well as one or more primary agencies responsible for accomplishing the ESF mission. Most ESFs also have support agencies responsible for assisting the primary agency or agencies.

5. *Incident Annexes* address contingency or hazard situations requiring specialized application of the NRP for seven different types of incidents: biological; catastrophic; cyber; food and agriculture; nuclear/

radiological; oil and hazardous materials; and, terrorism.

## Emergency Support Functions

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The ESFs are the primary vehicle through which DHS directly responds to disasters and coordinates the direct responses of other federal agencies as well as groups like the American Red Cross (Red Cross).<sup>30</sup> For each of the 15 ESFs, DHS identifies a primary federal agency (or, in one case, a lead organization, the Red Cross. For most ESFs, DHS also identifies one or more support agencies. Primary agencies' responsibilities include orchestrating federal support for their ESF, managing mission assignments and coordinating with state agencies, and executing contracts and procuring goods and services as needed. Support agencies' responsibilities include conducting operations at the request of DHS or the ESF primary agency, assisting with situation (or damage) assessments, and participating in training or other exercises having to do with their prevention, response, and recovery activities.<sup>31</sup>

The 15 ESFs, their overall purpose, primary and support agencies are as follows:

<b>Emergency Support Function</b>	<b>Purpose</b>	<b>Primary Agency</b>	<b>Support Agencies</b>
1—transportation <sup>32</sup>	To support DHS, other federal agencies, state, and local responders requiring transportation.	U.S. Department of Transportation	Agriculture (Forest Service); DOD; U.S. Army Corps of Engineers; DHS; Interior
2—communications <sup>33</sup>	To ensure the provision of federal communications support to federal, state, local, private sector response efforts during an Incident of National Significance; supplement the National Plan for Telecommunications Support in Non-wartime Emergencies (NTSP).	DHS/Information Analysis and Infrastructure Protection/National Communications System	Agriculture (Forest Service); Interior; FEMA
3—public works and engineering <sup>34</sup>	To coordinate and organize the capabilities and resources of the federal government to facilitate the delivery of services, technical assistance, engineering expertise, construction management, and other support relative to the condition of (or damage to) public works infrastructure and facilities.	DOD/U.S. Army Corps of Engineers (during response); FEMA (during recovery)	USDA; HHS; Interior; EPA; American Red Cross
4—firefighting <sup>35</sup>	To detect and suppress fires resulting from an Incident of National Significance by providing personnel, equipment, and supplies in support of state, local, and tribal agencies involved in firefighting operations.	Department of Agriculture/ Forest Service	Commerce; DOD; U.S. Army Corps of Engineers; DHS
5—emergency management <sup>36</sup>	To support the overall activities of the federal government for domestic incident management by providing the core management and administrative support functions in support of the NRCC, RRCC, and JFO <sup>37</sup> operations; ESF 5 is the “support ESF for all federal departments and agencies...from prevention to response and recovery.”	FEMA	None
6—mass care, housing, and human services <sup>38</sup>	To support the state, regional, local and tribal government and non-governmental efforts to address the nonmedical mass care, housing, and human services needs of individuals affected by Incidents of National Significance. Mass care includes organizing feeding operations and coordinating bulk distribution of emergency relief items; housing involves providing short- and long-term assistance with housing needs; and, human services includes counseling and identifying support for special needs populations.	FEMA American Red Cross	Agriculture (Food and Nutrition Service; Forest Service); U.S. Army Corps of Engineers; DHS/National Disaster Medical System; Interior
7—resource support <sup>39</sup>	To assist DHS and supporting federal, state, and local agencies prior to, during, and after incidents of national significance with emergency relief supplies, facility space, office equipment, office supplies, telecommunications and others services.	GSA	DHS
8—public health and medical services <sup>40</sup>	To provide coordinated federal assistance to supplement state and local resources in response to public health and medical care needs for incidents of national significance. Federal support can consist of assessment of public health needs, public health surveillance, medical care personnel, and medical equipment and supplies.	HHS	DOD; U.S. Army Corps of Engineers; DHS; DOT; American Red Cross

<b>Emergency Support Function</b>	<b>Purpose</b>	<b>Primary Agency</b>	<b>Support Agencies</b>
9—urban search and rescue <sup>41</sup>	To rapidly deploy the National Urban Search and Rescue (US&R) response system to provide specialized life-saving assistance to state and local authorities during an incident of national significance. US&R activities include locating and extracting victims and providing onsite medical assistance.	FEMA	Agriculture (Forest Service); DOD; U.S. Army Corps of Engineers; DHS/ U.S. Coast Guard; DHS/ Border and Transportation Security Directorate; DOT; U.S. AID
10—oil and hazardous materials response <sup>42</sup>	To provide a coordinated response to actual or potential oil and hazardous materials discharges or releases during incidents of national significance. ESF 10 operates by placing the mechanisms of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) within the broader NRP coordination structure. The NCP describes the National Response System—an organized network of agencies, programs, and resources with authorities and responsibilities in oil and hazardous materials response.	EPA DHS/U.S. Coast Guard <sup>43</sup>	Commerce/NOAA
11—agriculture and natural resources <sup>44</sup>	To support state, local tribal and other federal agencies' efforts to (1) address the provision of nutrition assistance, including determining needs, obtaining appropriate food supplies, and arranging for delivery of the supplies; (2) control and eradication of disease outbreaks and plant infestations; (3) assurance of food safety and security; and (4) protection of natural and cultural resources and historic (NCH) properties.	Department of Agriculture  Department of the Interior (NCH properties)	DOD; American Red Cross
12—energy <sup>45</sup>	To restore damaged energy systems and components during a potential or actual Incident of National Significance; collect, evaluate, and share information on energy system damage and estimations on the impact of energy system outages within affected areas.	Department of Energy	Agriculture/Rural Utilities Service; Commerce/NOAA; U.S. Army Corps of Engineers; DHS; Interior; Department of Labor; Department of State; EPA; Nuclear Regulatory Commission; Tennessee Valley Authority (TVA)
13—public safety and security <sup>46</sup>	To provide via federal to federal support or federal support to state and local authorities a mechanism for coordinating and providing non-investigative/ non-criminal law enforcement, public safety, and security capabilities and resources.	DHS  Department of Justice	Agriculture (Forest Service); DHS/Border and Transportation Security Directorate; DHS/Customs and Border Protection; DHS/ Immigration and Customs Enforcement; Interior
14—long-term community recovery and mitigation <sup>47</sup>	To provide a framework for federal support to enable community recovery from the long-term consequences of an Incident of National Significance.	Agriculture Commerce DHS/FEMA HUD Treasury SBA	Commerce; U.S. Army Corps of Engineers; Department of Energy; HHS; DHS; Interior; Department of Labor; DOT; EPA; TVA; American Red Cross
15—external affairs <sup>48</sup>	To provide accurate, coordinated, and timely information to affected audiences, including governments, media, the private sector, and the local populace.	FEMA	Commerce/NOAA; Department of Justice; Corporation for National and Community Service

## Catastrophic disasters and incidents of National Significance (INS)

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Recognizing that certain disasters are so different in terms of size, scope, and damage that they require a response above and beyond the normal procedures for “emergencies” and “major disasters,” DHS defines and has distinct plans for the federal response to “catastrophic” disasters.<sup>49</sup> Specifically, DHS defines a catastrophic event as:

Any natural or manmade incident, including terrorism, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions. A catastrophic event could result in sustained national impacts over a prolonged period of time; almost immediately exceeds resources normally available to state, local, tribal and private-sector authorities in the impacted area; and significantly interrupts governmental operations and emergency services to such an extent that national security could be threatened.<sup>50</sup>

Using this definition, DHS makes a number of assumptions about the scenarios that will unfold before, during, and after a catastrophic disaster and attempts to structure the federal response to address those assumptions (and their ramifications). DHS assumes:<sup>51</sup>

- A catastrophic incident results in large numbers of casualties and/or displaced persons;
- The incident may cause significant disruption of the area’s critical infrastructure, including transportation, telecommunications, and public health and medical systems;
- Response activities may have to begin without the benefit of a detailed or complete situation and needs assessment because a detailed, credible operating picture may not be possible for 24 to 48 hours or longer after the incident;

- The federal government may have to mobilize and deploy assets before local and state governments request them via normal protocols because timely federal support may be necessary to save lives, prevent suffering, and mitigate severe damage; and,
- Large numbers of people may be left temporarily or permanently homeless and require temporary or longer-term interim housing.

Consequently, in anticipation of or soon after a catastrophic incident, DHS is expected to rapidly — and proactively — provide critical resources to assist and augment the ongoing state and local responses. To do so, when the Secretary of DHS declares a disaster to be “catastrophic,” the department also implements the Catastrophic Incident Annex of the National Response Plan.<sup>52</sup> DHS characterizes this annex as establishing the context and overarching strategy for implementing and coordinating an accelerated, proactive national response to certain catastrophic disasters. When this annex is implemented, all federal agencies and others with responsibilities under the Emergency Support Functions (ESFs) of the National Response Plan are supposed to immediately begin operations. Specifically, DHS expects the federal government and others will need to provide expedited help in one or more of the following areas:<sup>53</sup>

- Mass care (shelter, food, emergency first aid, etc.), housing, and human services;
- Urban search and rescue, such as locating, extricating, and providing onsite medical treatment;
- Decontamination in incidents involving weapons of mass destruction;
- Public health and medical support;
- Medical equipment and supplies;
- Casualty and fatality management and transportation for deceased, injured, or exposed victims; and,
- Public information when state and local public communications channels are overwhelmed.

*When the Secretary of DHS declares a disaster to be “catastrophic,” the Department implements the Catastrophic Incident Annex of the National Response Plan.*

## *All catastrophic incidents are “incidents of national significance.”*

Because of fundamental and time-critical differences in catastrophic disasters, FEMA has established protocols to pre-identify and rapidly deploy essential resources. Among other things, FEMA assumes the demands of responding to a catastrophic disaster may mean it has to expedite or even temporarily suspend normal operating procedures for state and local governments to request assistance, doing so proactively rather than in response to things like specific requests based on detailed damage assessments.<sup>54</sup> For catastrophic incidents, DHS is supposed to activate and deploy DHS-managed teams, equipment caches, and other resources in order to accelerate the timely provision of critically skilled resources and capabilities.<sup>55</sup> These can include medical and search and rescue teams, transportable shelters, and preventive and therapeutic pharmaceutical caches that may be necessary to save lives and contain damage.

### Incidents of National Significance

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DHS defines incidents of national significance (INS) as “those high-impact events that require a coordinated and effective response by an appropriate combination of federal, state, local, tribal, private-sector, and nongovernmental entities in order to save lives, minimize damage, and provide the basis for long-term community recovery and mitigation activities.” All catastrophic incidents are also “incidents of national significance.”<sup>56</sup> DHS bases this definition of an INS on criteria drawn from HSPD-5:<sup>57</sup>

- A federal department or agency acting under its own authority has requested the assistance of the Secretary of Homeland Security;
- The resources of state and local authorities are overwhelmed and federal assistance has been requested by the appropriate state and local authorities in response to major disaster declarations under the Stafford Act or catastrophic incidents (as defined by DHS, above);
- More than one federal department or agency has become substantially involved in responding to an incident, for example, in response to credible threats or warnings of imminent terrorist attacks; and,
- The President directs the Secretary of Homeland Security to assume responsibility for managing a domestic incident.

### Managing the federal response to emergencies and disasters and implementing the National Response Plan

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To respond to a disaster or a potential situation that is likely to require a federal response, DHS (on its own or acting via FEMA) uses existing homeland security monitoring operations; creates or activates operational components to manage the federal response; and, designates one or more officials to coordinate. The operational components DHS uses or which can be activated (or take on situation-specific duties) include the Homeland Security Operations Center (HSOC), the Interagency Incident Management Group (IIMG), a National or Regional Coordination Center (NRCC or RRCC), Emergency Response Teams (an Advance Element, ERT-A; and a National team, ERT-N), and, the Joint Field Office (JFO), which can have one or two high-level officials directing and coordinating the federal response.

### Homeland Security Operations Center

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The Homeland Security Operations Center, which represents over 35 agencies, including state and local law enforcement as well as federal intelligence agencies, is always in operation. It provides situational awareness, and monitors conditions in the United States, and, in conjunction with the DHS Office of Information Analysis, issues advisories and bulletins concerning specific threats to the nation.<sup>58</sup> The HSOC continually monitors potential major disasters and emergencies and, when such an event occurs (or is likely) provides primary situational awareness to the Secretary and the White House. Depending on the nature of the incident and the response it demands, the HSOC may activate the Interagency Incident Management Group (IIMG).<sup>59</sup>

### Interagency Incident Management Group

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DHS is supposed to convene the IIMG when it declares a situation to be an Incident of National Significance. In addition, DHS should convene the IIMG when it determines there is a need to do so in response to incidents such as major disasters, a heightened threat situation, or, high-profile, large-scale events that present

high-risk targets, such as National Special Security Events (NSSEs).<sup>60</sup> The IIMG is comprised of senior representatives from other DHS agencies, other federal departments and agencies, and non-governmental organizations, such as the American Red Cross, as needed. When activated, the IIMG (1) maintains strategic situational awareness of threat assessments and ongoing incident-related operations and activities; (2) provides decision-making support for incident-related prevention, preparedness, response, and recovery efforts; (3) synthesizes key intelligence, frames issues, and makes recommendations with respect to policy, operational courses of action, and resource allocation; (4) anticipates evolving federal resource and operational requirements; and, (5) maintains ongoing coordination with the Principal Federal Official (PFO) and the Joint Field Office (JFO) Coordination Group.<sup>61</sup>

### Regional Response Coordination Center, National Response Coordination Center

For most major disasters, incidents, or emergencies, DHS (via FEMA) establishes a Regional Response Coordination Center (RRCC) using staff from regional offices. The RRCC coordinates the initial regional and field activities, such as deployment of advance teams of FEMA and other agencies' staff, and implements local federal program support until a multi-agency coordination center can be established. Depending on the scope and impact of the event, DHS (via FEMA) may also establish a National Response Coordination Center (NRCC) comprised of ESF representatives and FEMA support staff to carry out initial activation and mission assignment operations from FEMA headquarters. The NRCC supports the operations of the RRCC.<sup>62</sup>

### Emergency Response Team-Advance Element, National Emergency Response Team

FEMA's Emergency Response Team (ERT) is the principal interagency group that staffs the multi-agency coordination center where federal, state, and local officials coordinate and direct response and recovery operations.<sup>63</sup> Each FEMA region maintains an ERT ready to deploy in response to threats or incidents. Before a disaster or incident (when there is warning) or soon thereafter,

the RRCC typically deploys an Emergency Response Team-Advance Element (ERT-A) to the affected area(s). The ERT-A conducts preliminary damage and needs assessments and begins coordinating with the state as well as any federal resources that may be part of the initial deployment. For large-scale, high-impact events or when FEMA otherwise determines it is needed, FEMA also deploys a National Emergency Response Team (ERT-N), which is a national-level field response team. FEMA currently has 2 ERT-Ns.

### Joint Field Office

The Joint Field Office (JFO) is a multiagency coordination center that FEMA establishes locally to serve as the central point for coordinating and directing the efforts of the federal, state, and local officials involved in the response effort.<sup>64</sup> Often, FEMA establishes the JFO at the state's emergency operations center or other locations from which the affected state is directing response efforts. For a Stafford Act emergency or major disaster declaration, the President must designate a Federal Coordinating Officer (FCO) to direct all federal assistance in the disaster area.<sup>65</sup>



*The Joint Field Office (JFO) is a multiagency coordination center that FEMA establishes locally to serve as the central point for coordinating and directing the efforts of the federal, state, and local officials involved in the response effort.*

During an incident of national significance, which may or may not involve a Stafford Act declaration,<sup>66</sup> the Secretary of DHS may designate a Principal Federal Official (PFO) to act as the secretary’s representative in overseeing and executing incident management responsibilities.

The FCO is responsible for managing and coordinating federal assistance in response to declared disasters and emergencies. The FCO has the authority under the Stafford Act to request and direct federal agencies to use their authorities and resources to support or conduct response and recovery operations. The FCO provides overall coordination for the federal components of the JFO and works in partnership and support of the state officials to determine and meet state and local needs for assistance.<sup>67</sup>

The PFO is the primary point of contact and source of situational awareness for the Secretary of DHS for incidents of national significance. The PFO is expected to facilitate federal support to the unified command structure that is set up in conjunction with state and local officials. Also, PFOs coordinate the overall federal incident management and assistance activities throughout all of the phases of emergency management—prevention, preparedness, response, and recovery. In carrying out this coordination role, the PFO does not have direct authority over the FCO or other federal and state officials.<sup>68</sup>

## The Role of DOD, the National Guard, and the U.S. Coast Guard

The Department of Defense (DOD) makes a distinction between “homeland security” and “homeland defense” in defining mission responsibilities. Whereas homeland security refers to a concerted *national* effort to secure the homeland from threats and violence, including terrorism, homeland defense refers to *military* protection of United States territory, domestic population, and critical defense infrastructure against external threats and aggression. In the context of homeland security, DOD operates only in support of a civilian-led federal agency, referred to as Civil Support (CS). In the area of homeland defense (HD), however, DOD is the lead agency. The Assistant Secretary of Defense for Homeland Defense (ASDHD) is charged with leading the Department’s activities in homeland defense, and serves as DOD’s interagency liaison.<sup>69</sup>

## Military Support to Civil Authorities

Natural Disasters	Special Events	Manmade Disaster
Severe Weather	Olympics	CBRNE-CM
Firefighting	Summits	Terrorist Incident
Earthquakes	World Fair	Oil Spill
CBRNE-CM chemical, biological, radiological, nuclear, and high-yield explosives-consequence management		

JOINT PUBLICATIONS 3-26 HOMELAND SECURITY

Under the National Response Plan (NRP)<sup>70</sup> and the recently released DOD Joint Doctrine on Homeland Security<sup>71</sup> Military Support to Civil Authorities (MSCA) is normally provided only when local, state and other federal resources are overwhelmed and the Lead Federal Agency (LFA) responding to an incident or natural disaster requests assistance. This is a fundamental principle of DOD’s approach to civil support: “[I]t is generally a resource of last resort.”<sup>72</sup>

An exception is in cases of *immediate response authority*, a scenario entailing imminently serious conditions resulting from any civil emergency or attack requiring immediate action, where local military commanders may take such actions as necessary to save lives, prevent human suffering, and mitigate great property damage.<sup>73</sup>

The federal military role described in the NRP and the MSCA is apart from National Guard resources available to governors of affected states. Governors may utilize their own National Guard units, as well as other National Guard units made available by state EMAC compacts. In most circumstances, National Guard troops fall under the command of the Governor and the state Adjutant General, and they follow state emergency procedures.

When in state active duty status, the National Guard remains under the command of the governor, not DOD. The National Guard can also be “federalized” by the President to be placed under the command of DOD. As discussed below, a governor may also seek “Title 32 status” for the National Guard, which leaves the governor and the state Adjutant General in command, but provides federal funding and benefits.<sup>74</sup>

## Natural disasters and man-made disasters

In the event of a natural disaster or emergency the NRP stipulates that DOD may be asked to provide assistance to DHS and FEMA in an attempt to save lives, protect

property, and lessen the threat of catastrophe in the United States. When disasters occur and a military response is anticipated, DHS/FEMA will request a Defense Coordinating Officer (DCO) to serve as the single DOD point of contact within the disaster area. The DCO will be the operational contact to the designated combatant commander and designated Joint Task Force (JTF) commander.<sup>75</sup>

In situations when a disaster is anticipated and DOD wants to be forward leaning, Northern Command has designated a DCO prior to a DHS/FEMA request. This is done informally and is intended to allow the DCO to integrate into the state emergency operations center (EOC) as early as possible to begin assessing the needs of the affected area. This has been done in the absence of a Presidential directive and before state authorities have made specific requests for DOD support via FEMA. Additionally, the doctrine of immediate response is a DOD directive which allows deployment of some DOD resources prior to receiving formal requests from the lead federal agency.<sup>76</sup>

## Northern Command

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Within the DOD Joint Staff, civil support responsibilities reside with the Joint Director of Military Support. Northern Command (NORTHCOM) is the DOD coordinating command for domestic terrorist and natural disaster incidents. Northern Command carries out civil support missions with forces assigned as required from all the armed services, typically through the creation of a joint task force.<sup>77</sup> NORTHCOM has a permanently assigned Joint Interagency Coordination Group, comprised of liaison officers from other DOD components and other federal agencies, including the Department of Homeland Security.

As discussed above, unless there is specific direction from the President, requests for military assistance must originate from a lead federal agency. Typically, this falls to FEMA in natural disasters. Requests are submitted to the Office of the Secretary of Defense (OSD), where they are evaluated by the Assistant Secretary of Defense for Homeland Defense (ASDHD) according to the following criteria: legality, readiness, lethality, risk, cost, and appropriateness.<sup>78</sup>

Once the requests are approved by OSD, they are forwarded to the Joint Director of Military Support within

the Joint Staff, who in turn provides the appropriate orders to Northern Command. A Defense Coordinating Officer is designated and deployed to the area of incident.

When the size of the response is of a greater scale, a joint task force will be created, with the DCO normally serving as task force commander. The DCO then serves as the single point of contact for DOD resources, but does not have operational control of the U.S. Army Corps of Engineers or National Guard personnel operating in state active duty or Title 32 status.<sup>79</sup>

The process for requesting DOD active duty forces has several layers of review. Requests for DOD assistance are to be generated at the state level. These go from the state to FEMA's Federal Coordinating Officer, who in turn requests assistance from the DCO. The DCO passes these requests on to the joint task force, which routes it through NORTHCOM to the Office of the Secretary of Defense Executive Secretariat, to the Joint Directorate of Military Support.<sup>80</sup>

At each stage, the requirement is validated to ensure that the request can be met and that it is legal to provide the requested assets. Once vetted, the request is tasked to the services and coordinated with Joint Forces Command and forces or resources are then allocated to the joint task force, which in turn gets the support down to the user level by way of the DCO. This process is in place not only to satisfy DOD internal requirements, but to ensure maximum coordination with both FEMA and state governments.

## National Guard Bureau

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The National Guard is the nation's first military responder to events within the United States. Governors historically rely on the Guard to assist civilian authorities during times of natural or manmade disasters. In particular, the National Guard is a major asset in responding to any catastrophic incident within the United States. The National Guard is a reserve component of the Departments of the Army and the Air Force, at times, called in to support federal operations. The National Guard is also a force for each state, deploying for state duty status under the control of the governor. Only the National Guard has the unique dual mission of providing forces at both the state and federal levels and is the only service that abides by two oaths-of-office, one to the governor and one to the President of the United States.<sup>81</sup>



FEMA

The governor has command and control of the National Guard, either in state active duty or Title 32 status, unless units are federalized.<sup>82</sup> If federalized under Title 10, the Guard falls under the command and control of the President. While on state active duty status, the Guard's mission is to serve its state or territory during times of crisis, disaster, civil disturbance or other threats to life and property as directed by the governor. They are funded by state dollars and are entitled to state benefits and compensation. Under Title 32 status, the National Guard is trained and resourced to support federal war-fighting operations, yet remains under control of the governor, while supported by federal funds with Secretary of Defense approval.<sup>83</sup>

During Hurricane Katrina, the governors of Alabama, Mississippi, and Louisiana requested that all National Guard forces deployed to their states operate under Title 32 status. This request was granted retroactively to August 29 by the Secretary of Defense. Under Title 32, the governors were in command of all National Guard assets and actions during Hurricane Katrina.<sup>84</sup>

The National Guard may also be called up by a governor at his or her own initiative, paid by the state, to respond to a state emergency or protect state facilities. Many states do not have the fiscal resources to use the National Guard extensively in this manner.

The National Guard Bureau (NGB) is the home of the leadership of the National Guard, headed by a Chief, who is supported by the Director of Army National Guard and the Director of the Air National Guard.<sup>85</sup> These positions, filled by military Guard personnel, are Title 10 positions. The current chief of the National Guard Bureau is Lieutenant General H Steven Blum, and although he is

the senior Guard officer, he does not command National Guard forces. Lieutenant General Daniel James, III is the Director of the Air National Guard and Lieutenant General Clyde A. Vaughn is Director of the Army National Guard.

Under the National Response Plan, the role of the National Guard Bureau is not defined. However, in roughly 50 percent of the states and territories, the Adjutant General also serves as the state's senior emergency management official, responsible for coordinating and integrating all response agencies.<sup>86</sup> The National Guard Bureau and the National Guard of the individual states and territories work on a daily basis with local, state, and federal civilian agencies in various communities in all of the states and territories.

## United States Coast Guard



U.S. COAST GUARD

The Coast Guard is a military, multi-mission, maritime service within the Department of Homeland Security and one of the nation's five

armed services. Since its founding as the Revenue Cutter Service in 1790, the Coast Guard has provided maritime safety and security capabilities, and is renowned worldwide for its search and rescue (SAR) capabilities, whether near the shore or hundreds of miles at sea. Title 14 of the United States Code requires the Coast Guard to develop, establish, maintain and operate rescue facilities for the promotion of safety on, under and over the high seas and waters subject to the jurisdiction of the United States.

Additionally, with the passage of the Maritime Transportation Security Act (MTSA) in 2002, the Coast Guard was given added responsibilities for the enforcement of port safety, security, and marine environmental regulations including the protection and security of vessels, harbors, and waterfront facilities, deepwater ports and waterways safety.<sup>87</sup>

The Coast Guard has a longstanding history in the Gulf of Mexico region. The current Eighth Coast Guard District, headquartered in New Orleans, covers all or part of 26 states throughout the Gulf coast and heartland of America. It stretches from the Appalachian Mountains and Chattahoochee River in the east to the Rocky Mountains in the west, and from the U.S.-Mexico border and the Gulf of Mexico to the Canadian border in North Dakota, which

includes 15,490 miles of coastline and 10,300 miles of inland navigable waterways.<sup>88</sup>

Within the Coast Guard's District boundaries, the operational Coast Guard is organized into Sectors which oversee response, prevention, and logistics units, and coordinate Coast Guard operations within the Sector's geographic boundaries. The areas most affected by Hurricane Katrina are those that fall within the boundaries of Sector New Orleans and Sector Mobile, Alabama.

## Private authorities and capabilities — role of the American Red Cross

The American Red Cross (Red Cross) is the only nongovernmental organization with lead agency responsibilities under the NRP. The Red Cross is an independent, non-governmental organization (NGO)<sup>89</sup> that operates as a nonprofit, tax-exempt, charitable institution pursuant to a charter granted by the United States Congress.<sup>90</sup> It has the legal status of a "federal instrumentality" due to its charter requirements to carry out responsibilities delegated by the federal government. Among those responsibilities are:

to perform all duties incumbent upon a national society in accordance with the spirit and conditions of the Geneva Conventions to which the United States is a signatory, to provide family communications and other forms of assistance to members of the U.S. military, and to maintain a system of domestic and international disaster relief, including mandated responsibilities under the Federal Response Plan coordinated by the Federal Emergency Management Agency (FEMA).<sup>91</sup>

The Red Cross is not a federal agency, nor does it receive federal funding on a regular basis to carry out its services and programs.<sup>92</sup> It receives financial support from voluntary public contributions and from cost-recovery charges for some services.<sup>93</sup> Its stated mission is to "provide relief to victims of disasters and help people prevent, prepare for, and respond to emergencies."<sup>94</sup>

To meet its mandated responsibilities under the NRP, the Red Cross functions as an ESF primary organization in coordinating the use of mass care resources in a presidentially declared disaster or emergency.<sup>95</sup> As the

lead agency for ESF #6, dealing with Mass Care, Housing and Human Services, the Red Cross assumes the role of providing food, shelter, emergency first aid, disaster welfare information and bulk distribution of emergency relief items.<sup>96</sup> ESF #6 includes three primary functions: Mass Care, Housing, and Human Services:<sup>97</sup>

- Mass Care involves the coordination of nonmedical care services to include sheltering of victims, organizing feeding operations, providing emergency first aid at designated sites, collecting and providing information on victims to family members, and coordinating bulk distribution of emergency relief items.
- Housing involves the provision of assistance for short- and long-term housing needs of victims.
- Human Services include providing victim-related recovery efforts such as counseling, identifying support for persons with special needs, expediting processing of new Federal benefits claims, assisting in collecting crime victim compensation for acts of terrorism, and expediting mail services in affected areas.

### Function 1: Mass Care

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- The NRP describes the Mass Care function as comprised of six elements: coordination, shelter, feeding, emergency first aid, Disaster Welfare Information ("DWI"), and bulk distribution.<sup>98</sup>
- The coordination element relates to assisting victims obtain various forms of available federal assistance, as well as gathering information about shelters and food kitchens for victims.
- The shelter element includes the use of pre-identified shelters, creating temporary facilities capable of housing victims, and coordination of obtaining shelters outside of the immediate incident area.
- The feeding element includes a variety of food distribution sites, from mobile food carts, to kitchens, to bulk distribution of food.
- The emergency first-aid element consists of assisting victims with the most basic first-aid needs, as well as, coordinating the referral of victims to local hospitals, if needed, and other appropriate medical treatment options.
- The Disaster Welfare Information ("DWI") element provides for family connectedness services. It aims

to re-connect families displaced or separated by the incident, as well as assist victims of the incident to connect with family or friends located outside the area of the incident.

- The bulk distribution element provides emergency relief items, principally ice, water and food, at specific sites to meet the urgent needs of victims within the affected area.

## Function 2: Housing

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The housing function addresses both the short and long-term housing needs of victims affected by an incident.<sup>99</sup> It is effectuated through programs designed to meet the individualized needs of victims and includes a variety of options, including provision of temporary housing, rental assistance, or financial assistance for the repair or replacement of original residences.

## Function 3: Human Services

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The human services function implements programs and services to assist victims restore their livelihoods.<sup>100</sup> It acts as a broad-based, multipurpose effort to support divergent needs such as re-routing of mail, assistance with processing federal benefits-related paperwork, assuring the provision of necessary mental health services, and providing other important, sometimes victim-specific services. The wide range of services may include support for victims with disabilities and victims who do not speak English.

With its shelters, feeding kitchens, and blood distribution capabilities, the Red Cross has long played an important role in assisting those affected by natural disasters — especially hurricanes. Due to the frequency of hurricanes in the United States, the Red Cross has developed an expertise in deploying its resources and operational capabilities to help those affected by hurricanes. In its 23-page *Tropical Storm and Hurricane Action Plan*, (“Hurricane Plan”) the Red Cross outlines its systematic approach to preparing for and responding to tropical storms and hurricanes.<sup>101</sup> “The objective of this plan is to enable the Red Cross to be ready to deliver immediate services and assistance needed by those threatened and affected by such storms at an appropriate scope and scale,” the report says.<sup>102</sup>

Additionally, as the NRP-model to disaster planning takes shape, the Red Cross’ preparation regime is being bolstered with a Standard Operating Procedure Document for ESF #6.<sup>103</sup> Although not formally adopted and still in the draft stage, the document identifies the procedures, protocols, information flows and organizational relationships for the activation, implementation and operation of the Red Cross’ responsibilities under ESF #6. There is also an interim Shelter Operations Management Tool Kit, which provides Red Cross chapters and shelter managers with resources to plan, open, operate, and close shelters.<sup>104</sup>

Adhering to the concept of all disasters being local, the Red Cross relies on its field chapters to act as first responders in opening shelters and providing for the feeding of those in need.<sup>105</sup> The first 48 hours of a disaster are usually handled by the local Red Cross chapters, and thereafter by national-level support, as both the federal government (FEMA), and the Red Cross National Headquarters, begin to reach the affected area.<sup>106</sup> The national Red Cross is structured to provide relief (mostly shelter and feeding) from days two through 30 of a disaster.<sup>107</sup> The local chapter ultimately is supported by its service area, of which there are eight in the United States, followed by support from the National Headquarters in Washington, D.C.<sup>108</sup>



For disasters such as hurricanes, the Red Cross' actions prior to landfall typically begin with activating the chapter response plans in all of the areas threatened by the storm.<sup>109</sup> Simultaneously, the jurisdictional service areas move into the Service Area Major Disaster Response Structure ("Disaster Response Structure"). At this time the service areas establish their contacts with the affected state's emergency operations center ("EOC"). This often involves positioning a Red Cross official at the state EOC. The service area then begins deploying resources to the threatened areas as called for under the chapters' planning requirements. Also, at this pre-landfall time, a disaster relief operations headquarters is established.<sup>110</sup>

During the pre-landfall stage, the local chapter is to focus on several key activities: sheltering, feeding, public information, fundraising and maintaining contact with government officials, specifically emergency management officials.<sup>111</sup> While the chapter response operation is arming itself with the necessary resources, the service areas shift into their Disaster Response Structure. The service area personnel are responsible for implementing the necessary facility arrangements so that storm victims can be sheltered and fed. The service area also deploys additional personnel to the chapter regions. Once the Disaster Response Structure is opened, the national headquarters shifts its Disaster Operations Center into hurricane response mode.<sup>112</sup> At this point, personnel from Headquarters' Preparedness and Response division are able to monitor developments and deploy additional resources as necessary.

Following landfall of a hurricane, the affected chapters continue their focus on the key activities of sheltering, feeding, disaster assessment, providing public information and liaising with government officials.<sup>113</sup> After the shelters and feeding kitchens are opened, the chapters expand their role to include bulk distribution of supplies. Supplies include toiletries packages, clothing and blankets, and as the storm passes, clean-up supply packs, including mops, rakes, trash bags, and cleaning supplies to assist storm victims clean their residences and neighborhoods.<sup>114</sup>

As the impact of the disaster becomes better understood, a Disaster Relief Operation Headquarters is established in the region. The operations headquarters is activated, meaning operational oversight and direction of Red Cross relief activities is transferred to the on-site

headquarters.<sup>115</sup> As the disaster headquarters staffs up, the service area's role decreases.

Outside of the affected region, other service areas and the national headquarters remain poised to assist as necessary. The main opportunities for other service areas involve shifting resources, such as cots, blankets, and other warehoused supplies, to the affected region. Personnel at national headquarters monitor events in the field and leverage relationships with national agreements with suppliers, partner groups and agencies.<sup>116</sup>

## Service area major Disaster Response Structure

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Upon the approach of a threatening hurricane, "the service area reconfigures its structure, priorities and actions to provide support, guidance and resource assistance to its threatened chapters."<sup>117</sup> The Disaster Response Structure, led by a response manager, is comprised of four departments or cells. These are the planning cell, forward headquarters cell, information and resource management cell, and the service area response operations.<sup>118</sup>

### Planning cell

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The planning cell is focused on ensuring adequate services and logistics support. "The planning cell develops an anticipated service delivery plan and deploys the forward headquarters cell, which enables the relief operation to begin service delivery immediately after the storm makes landfall."<sup>119</sup> The planning cell is tasked with determining the necessary scope of Red Cross service delivery, an estimated budget and the estimated length of time needed to serve the affected area.<sup>120</sup> The planning cell is the heart of decision making as it relates to what people need, where they need it, and, based on a damage assessment, how long will services be necessary.

### Response manager

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The response manager oversees the disaster response. The manager's responsibilities include ensuring adequate levels of staffing throughout the response organization, conducting staff meetings with the Disaster Response team, leading conference calls with the affected chapters, ensuring that adequate reports are compiled for coordination with state and federal emergency

*In most situations, emergency management in the U.S. envisions a process of escalation up from the local level as incidents grow or as it becomes known that an incident has overwhelmed local and state capabilities.*

management officials, and assuring the sufficient movement of assets, both human and material, to the affected region.<sup>121</sup>

### Forward headquarters cell

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The forward headquarters cell is “the deployed unit of the planning cell.”<sup>122</sup> Its most important task is to establish a relief operation headquarters and to receive Red Cross personnel, both paid Red Cross employees and volunteers, and material resources.<sup>123</sup> Essentially this group serves as the advance team prior to the opening of a headquarters operation near the affected area.

### Information and resource management cell

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The information and resource management cell is a tactical team that concentrates on gathering information and supporting the local chapters in the evacuation of people.<sup>124</sup> While the Red Cross does not physically transport evacuees, it is often the recipient of a large percentage of evacuees, as shelters are established. This group establishes reporting requirements, coordinates data gathering (such as shelter tallies), monitors the inbound flow of resources to shelters, helps acquire vehicles, and handles all issues related to the immediate deployment of resources, including maintaining computer systems, managing supply warehouses, and ensuring all invoices are properly processed.<sup>125</sup>

### Service area response operations

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The day-to-day paid operations staff of the service area coordinate fundraising and communications and provide the institutional knowledge of the affected area.<sup>126</sup> Armed with the right data, and knowledge of the area, the information and resources management cell can help provide essential services to those in need.<sup>127</sup>

## State, local, and private authorities and capabilities

### Typical local and state emergency management responsibilities

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Whether the response is coming from local or state officials—or both—most emergency management agencies and government plans assume it may take 24 to 72 hours to get assistance to individuals, particularly those who remain in affected areas. Consequently, successful emergency management can, in part, depend on individuals’ willingness to evacuate to places where more immediate assistance may be available (when time and circumstances permit) and/or their preparedness to survive independently for the 24 to 72 hours that responders expect it will take to first deliver assistance.

Nonetheless, as discussed elsewhere in this report, primary responsibility for the first response to any potential or imminent incident or disaster begins — and often stays — at the local and state levels. In most situations, emergency management in the U.S. envisions a process of escalation up from the local level as incidents grow or as it becomes known that an incident has overwhelmed local and state capabilities.<sup>128</sup>

### Local emergency management

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First responders — local fire, police, and emergency medical personnel who respond to all manner of incidents such as earthquakes, storms, and floods — have the lead responsibility for carrying out emergency management efforts. Their role is to prevent, protect against, respond to, and assist in the recovery from emergencies, including natural disasters. Typically, first responders are trained and equipped to arrive first at the scene of an incident and take action immediately, including entering the scene, setting up a command center, evacuating those at the scene, tending to the injured, redirecting traffic, and removing debris.<sup>129</sup>

Local governments — cities, towns, counties or parishes — and the officials who lead them are responsible for developing the emergency operations and response plans by which their communities respond to disasters and other emergencies, including terrorist attacks. Local emergency management directors are also generally responsible for providing training to prepare for disaster response and they seek assistance from their state emergency management agencies when the situation exceeds or exhausts local capabilities.<sup>130</sup> In many states, they may also negotiate and enter into mutual aid agreements with other jurisdictions to share resources when, for example, nearby jurisdictions are unaffected by the emergency and are able to provide some assistance.<sup>131</sup>

Particularly relevant to the preparation for Hurricane Katrina, local officials have significant responsibilities for either setting evacuation laws and policies or working with their state government to enforce state laws pertaining to evacuations.<sup>132</sup> According to the National Response Plan, depending on the terms of the state or local laws, local officials have “extraordinary powers” to, among other things, order evacuations. In addition, local officials may suspend local laws and order curfews.<sup>133</sup>

## State emergency management

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As the state’s chief executive, the governor is responsible for the public safety and welfare of the state’s citizens and generally has wide-ranging emergency management responsibilities, including requesting federal assistance when it becomes clear the state’s capabilities will be insufficient or have been exhausted. Governors are responsible for coordinating state resources to address the full range of actions necessary to prevent, prepare for, and respond to incidents such as natural disasters.

Upon their declaration of an emergency or disaster, governors typically assume a variety of emergency powers, including authority to control access to an affected area and provide temporary shelter. Also, in most cases, states generally authorize their governors to order and enforce the evacuation of residents in disaster and emergency situations. The federal government generally defers to the states to enact laws dealing with evacuation, with local officials—as mentioned earlier—typically responsible for working with state officials to enforce those laws.<sup>134</sup>

Governors also serve as the commanders-in-chief of their state military forces,<sup>135</sup> specifically, the National Guard

*Governors are responsible for coordinating state resources to address the full range of actions necessary to prevent, prepare for, and respond to incidents such as natural disasters.*

when in state active duty or Title 32 status.<sup>136</sup> In state active duty — to which governors can call the Guard in response to disasters and other emergencies — National Guard personnel operate under the control of the governor, are paid according to state law, and can perform typical disaster relief tasks, such as search and rescue, debris removal, and law enforcement. Most governors have the authority to implement mutual aid agreements with other states to share resources with one another during disasters or emergencies when, for example, others (particularly nearby states) are unaffected by the emergency and able to provide assistance.<sup>137</sup> Most states request and provide this assistance through the EMAC.

State emergency management agencies —reporting to their respective governors — have primary responsibility for their states’ disaster mitigation, preparedness, response, and recovery activities. These agencies typically coordinate with other state agencies as well as local emergency response departments to plan for and respond to potential or imminent disasters or emergencies. Among other things, state emergency management agencies are responsible for developing state emergency response plans, administering federal grant funding, and, coordinating with local and federal agencies to provide training and other emergency response-related activities.<sup>138</sup> Some states, such as Louisiana and Mississippi, spell out specific tasks or preparatory steps emergency management agencies must take to meet their responsibilities.

For example, Louisiana requires that its Office of Homeland Security and Emergency Preparedness determine requirements for food, clothing, and other necessities and procure and pre-position these supplies in the event of an emergency.<sup>139</sup> Similarly, Mississippi requires its emergency management agency to determine needs for equipment and supplies and plan and procure those items as well.<sup>140</sup>

# Specific state and local emergency management and homeland security laws and roles and responsibilities—Alabama, Mississippi, Louisiana, and the city of New Orleans

## Alabama

### Governing statutes

Two Alabama statutes address how the state prepares for and responds to emergencies and disasters: the Alabama Emergency Management Act of 1955 (EMA) and the Alabama Homeland Security Act of 2003 (HSA). The EMA authorizes the state to prepare for and manage disasters and emergencies. It also authorizes the state to make grants to local governments to assist their emergency management activities and improve preparedness. The HSA established a state Department of Homeland Security (and other entities) to coordinate and undertake state homeland security preparedness, planning, and response activities.<sup>141</sup>

### Roles and responsibilities

State documents detail the specific options and steps available to the chief executive, including an analysis of gubernatorial prerogatives, including:<sup>142</sup>

First and foremost, the governor must understand and accept the fact that he/she is the primary person responsible for response and crisis management within his/her state. All citizens look to their governor as the person ultimately responsible. That is not to take away from the local responsibility of mayors, city councils, and county commissions, but, in truth and fact, “the buck stops at the governor.” Secondly, although the governor must be the leader of his/her state, the governor must also be prepared to delegate.



STATE OF ALABAMA

This statement may seem rather simplistic since every governor in the United States is confronted with so many governmental and administrative decisions, on a daily basis, that they obviously need to be able to delegate. On the other hand, in the case of an emergency catastrophe situation, the number of issues that arise are exponentially greater than ordinary day-to-day issues of government, they are unusual, sometimes technical in nature, they require instantaneous decisions, as opposed to general governmental issues which commonly allow for consideration and even collaboration among advisors and affected entities. In these regards, in order to delegate, it is extremely important that the governor has surrounded himself/herself with an outstanding group of cabinet officials who are not only qualified but who are both qualified and capable of responding in emergency situations. This is most particularly true of the adjutant general of the state’s National Guard, the director of the state’s Department of Homeland Security, and the office of the director of the state’s office of Emergency Management. Obviously each of these positions is a key appointment for every governor, but when confronted with a catastrophic emergency, the importance of the quality and qualifications of the persons holding these positions becomes extraordinarily important. Thirdly, an emergency operations center and a communications system which are capable of and designed to operate under emergency conditions become a key element of the governor’s ability to communicate, manage, and lead through the crisis. Finally, there must be pre-planning (“emergency operations plan”) that sets out clearly policies, procedures, and responsibilities that will be required to meet all known emergency catastrophe situations. These must be coordinated with local emergency management officials and local government officials.<sup>143</sup>

Consistent with the National Response Plan and the practices of other states, in Alabama responsibility for emergency preparedness and response begins at the local level and escalates as the emergency exceeds the capabilities of each level of government. The state’s Emergency Operations Plan (EOP) spells this out, specifying that, “When a disaster is imminent or has occurred, local governments have the primary

responsibility and will respond to preserve life and property. . . . When disaster conditions appear likely to exceed the combined capabilities of a local jurisdiction and mutual aid compact signatories, local governments will request the support of the state. . . . If the capabilities (financial or operational) of state government are exceeded, the governor can request federal disaster emergency assistance.”<sup>144</sup>

Alabama’s statutes authorize and direct local governments to establish emergency management organizations (agencies), appoint directors for these organizations, and confer police officer powers on their officials. In addition, local directors of emergency management may develop mutual aid agreements with public or private agencies (such as nearby counties) for emergency aid and assistance during disasters and emergencies.<sup>145</sup> These local directors and some of their personnel must, if they choose to receive state funding, meet state-set performance and competence standards for their positions.<sup>146</sup>

Alabama’s statutes outline specific responsibilities of the state’s Emergency Management Agency as well as its Department of Homeland Security. The state EMA has overall responsibility for preparing for and managing disasters and emergencies. Its director is appointed by the governor and also serves as an assistant director for the state’s Department of Homeland Security.<sup>147</sup> To meet its obligations, the state EMA promulgates a statewide Emergency Operations Plan with policy and guidance for state and local disaster mitigation, preparedness, response, and recovery operations.<sup>148</sup> The plan also outlines state and local government responsibilities in relation to federal disaster assistance programs under the Stafford Act.<sup>149</sup>

Alabama’s Director of Homeland Security, also appointed by the governor, heads the state’s Department of Homeland Security and has overall responsibility for the state’s homeland security preparedness and response activities. Specific state Department of Homeland Security responsibilities include: receiving and disseminating federal intelligence; planning and executing simulations; ensuring cooperation among public officials and the private sector; coordinating receipt and distribution of homeland security funding; and coordinating state strategy and standards for homeland security efforts.<sup>150</sup>

## Mississippi

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### Governing statutes

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The Mississippi Emergency Management Law outlines the specific responsibilities of key state entities and emergency responders and provides for the coordination of emergency preparedness, response, recovery and mitigation activities among state agencies, local and federal governments, and the private sector.<sup>151</sup> The law establishes the Mississippi Emergency Management Agency (MEMA); confers emergency powers on the governor, MEMA, municipal and county governments; and, authorizes the establishment of the Mississippi Emergency Operations Plan (MEOP).<sup>152</sup>

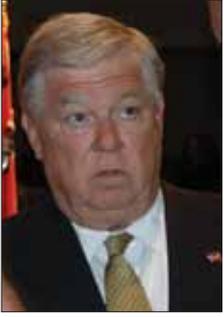
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### Roles and responsibilities

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Consistent with the National Response Plan and the practices of other states, in Mississippi responsibility for emergency preparedness and response begins at the local level and escalates as the emergency exceeds the capabilities of each level of government. Among other things, Mississippi’s governing statute spells out that “state policy for responding to disasters is to support local emergency response efforts,” but it also recognizes that catastrophic disasters can overwhelm local resources and that, as a result, the state “must be capable of providing effective, coordinated, and timely support to communities and the public.”<sup>153</sup>

The state’s statute authorizes (but does not direct) counties and municipalities to create emergency management organizations, which are in turn authorized to do the various things necessary to handle emergency management functions in a disaster.<sup>154</sup> Local governments are also authorized to enter into mutual aid agreements within the state (for example, with nearby counties) for emergency aid and assistance during disasters and emergencies.<sup>155</sup> If a disaster or emergency “exceeds the capability of local resources and personnel, state resources may be made available through coordination” with MEMA. Local authorities are mandated to “recognize the severity and magnitude” of the emergency by (1) declaring a local emergency, (2) utilizing the localities own resources and (3) designating one capable person to make requests to MEMA for additional resources.<sup>156</sup>



The governor of Mississippi is granted broad powers to deal with a natural disaster and may assume direct operational control over all state emergency management functions.<sup>157</sup> For example, the governor is authorized to “determine needs for food, clothing or other necessities in

the event of attack, natural, man-made or technological disasters and to procure supplies, medicines, materials, and equipment.” As commander-in-chief of the state militia, the governor may order the Mississippi National Guard into active state service.<sup>158</sup>

The MEMA director, appointed by the governor, is responsible for, among other things: working with the governor to prepare and implement an emergency management plan that is coordinated with federal and state plans to the fullest extent possible; adopting standards and requirements for local emergency management plans; determining needs for equipment and supplies; planning for and procuring supplies, medicine and equipment; and, assisting political subdivisions with the creation of urban search and rescue teams. In addition, the MEMA director is authorized to create mobile support units to reinforce disaster organizations in stricken areas. MEMA’s director also serves as a liaison to the emergency management agencies of other states and the federal government.<sup>159</sup>

## Louisiana

### Governing statutes

The Louisiana Homeland Security and Emergency Assistance and Disaster Act outlines the specific responsibilities of key state entities and emergency responders and provides for the coordination of activities among state agencies and local and federal governments. The law establishes the Louisiana Office of Homeland Security and Emergency Preparedness (LOHSEP), confers emergency powers on the governor and parish and municipal governments, and requires the establishment of the Louisiana Emergency Management Plan (EOP).<sup>160</sup>

### Roles and responsibilities

In Louisiana, parish and municipal governments’ chief executives by law have overall responsibility for the direction and control of emergency and disaster operations and are assisted by a local homeland security and emergency preparedness director.<sup>161</sup> Their responsibilities include the development and implementation of emergency management programs to provide for rapid and effective action to “direct, mobilize, staff, train and coordinate use of local resources.”<sup>162</sup>

Louisiana’s governor has overall responsibility for emergency management in the state and is assisted in these duties by the LOHSEP director in meeting dangers to the state and people presented by emergencies or disasters. The governor is authorized, for example, to declare a disaster or emergency if he or she finds that one has occurred (or the threat is imminent) and coordinate delivery of all emergency services (public, volunteer, and private) during a natural disaster.<sup>163</sup> By making a disaster or emergency declaration, the governor activates the state’s emergency response and recovery program (which is under the command of the LOHSEP director). This authorizes the governor to, among other things: (1) utilize all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the disaster or emergency; (2) direct and compel the evacuation of all or part of the population from any stricken or threatened areas within the state if deemed necessary for the preservation of life; and, (3) prescribe routes, modes of transportation, and destination in connection with evacuation.<sup>164</sup>

The LOHSEP, within the Military Department and under the authority of the governor and the adjutant general, is responsible for emergency preparedness and homeland security in the state.<sup>165</sup> The LOHSEP prepares and maintains a homeland security and state emergency operations plan (EOP), which establishes the policies and structure for the state’s management of emergencies and disasters. The EOP prescribes the phases of emergencies and disasters—preparedness, response, recovery and prevention (mitigation)—and outlines the



roles and responsibilities of the state's Emergency Support Functions (ESFs), which mirror those in the National Response Plan. The EOP is an all-hazards plan, assigning responsibilities for actions the state will take to provide for the safety and welfare of its citizens against the threat of natural and man-made emergencies and disasters. The EOP is designed to coordinate closely with the federal National Response Plan as well as parish Emergency Operations Plans.<sup>166</sup>

## New Orleans

The City of New Orleans Comprehensive Emergency Management Plan ("New Orleans Plan") is consistent with the State of Louisiana Emergency Management Plan. The plan reflects the principle that "City government bears the initial responsibility for disaster response and relief."<sup>167</sup> It is therefore the Mayor of the City of New Orleans who must initiate, execute, and direct the operations during any emergency or disaster affecting the City of New Orleans.<sup>168</sup>

According to the New Orleans Plan, "[i]f it becomes clearly evident that local resources are inadequate to fully manage the effects of an emergency or disaster, the Mayor may request state and/or federal assistance through [LOHSEP]."<sup>169</sup> The New Orleans Office of Emergency Preparedness ("NOOEP") will coordinate with the LOHSEP to assure the most effective management of such assistance.<sup>170</sup>

The plan also says, "The authority to order the evacuation of residents threatened by an approaching hurricane is conferred to the Governor by Louisiana statute."<sup>171</sup> But this power "is also delegated to each political subdivision of the State by Executive Order."<sup>172</sup> "This authority empowers the chief elected official of New Orleans, the Mayor of New Orleans, to order the evacuation of the parish residents threatened by an approaching hurricane,"<sup>173</sup> according to the plan.

For example, New Orleans Mayor Ray Nagin, according to the plan, is responsible for giving the order for a mandatory evacuation and supervising the actual evacuation of the population. The city's Office of



Emergency Preparedness "must coordinate with the state on elements of evacuation" and "assist in directing the transportation of evacuees to staging areas."<sup>174</sup>

The New Orleans Plan states, "The safe evacuation of threatened populations . . . is one of the principle reasons for developing a Comprehensive Emergency Management Plan."<sup>175</sup> The city's evacuation plan states, "The city of New Orleans will utilize all available resources to quickly and safely evacuate threatened areas."<sup>176</sup>

The plan also directs "[s]pecial arrangements will be made to evacuate persons unable to transport themselves or who require specific life saving assistance. Additional personnel will be recruited to assist in evacuation procedures as needed."<sup>177</sup> The evacuation plan further warns that "[i]f an evacuation order is issued without the mechanisms needed to disseminate the information to the affected persons, then we face the possibility of having large numbers of people either stranded and left to the mercy of the storm, or left in areas impacted by toxic materials."<sup>178</sup>

## Threats and vulnerabilities related to hurricanes

### General threats — frequency of hurricanes and vulnerable coastal areas in the U.S.

Hurricanes threaten the United States, particularly the coastal areas along the Gulf of Mexico and Atlantic Ocean, virtually every year. While Florida is the state most frequently hit, other states — particularly Texas, Louisiana, and North Carolina — have frequently been struck by hurricanes, according to the records of the National Hurricane Center (NHC).<sup>179</sup> The coastal areas of these and other states are among the most vulnerable to storm surge, which carries the greatest potential for loss of life in a hurricane. Storm surge is the water that swirling hurricane force winds push toward the shore as the storm advances. Combined with normal tides, this can increase the average water level by 15 feet or more.<sup>180</sup>

Flooding is also a serious threat to lives and property in a hurricane. The NHC reports that, although storm surge has the greatest potential to take lives, in the last 30 years, more people have died from hurricane-induced inland

flooding.<sup>181</sup> Tornadoes can also add to the destructive power of a hurricane. While not all hurricanes produce them, according to the NHC, studies have shown that more than half of the hurricanes that reach landfall produce at least one tornado.

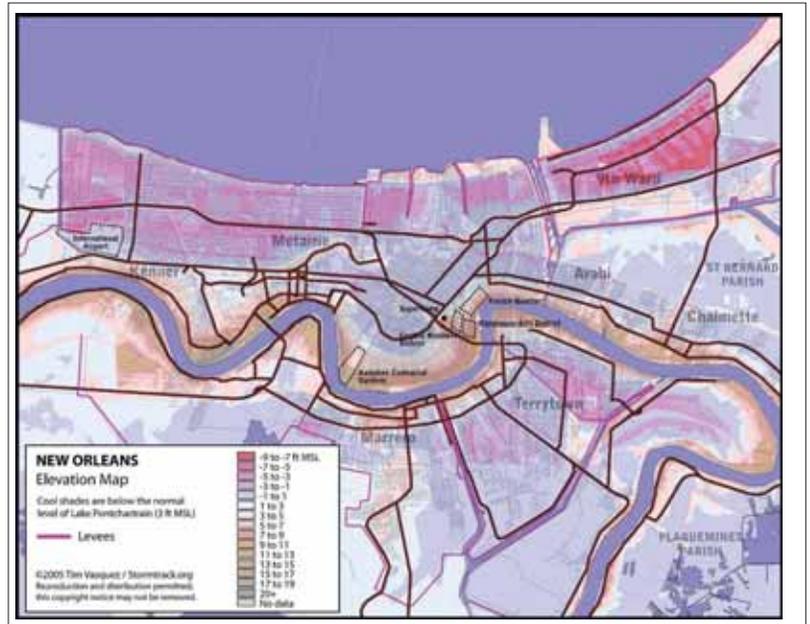
### Specific vulnerabilities of New Orleans— inherent vulnerability to flooding

Metropolitan New Orleans is built on subsiding swampland on the delta of the Mississippi River, which makes the city inherently vulnerable to flooding.<sup>182</sup> The City of New Orleans is shaped like a bowl, with an average elevation of 6 feet below sea level.<sup>183</sup> Some elevations are as high as 12 feet above sea level, and some elevations are as low as 9 feet below sea level.<sup>184</sup> The Mississippi River, which flows through the middle of New Orleans, is on average 14 feet above sea level, and Lake Pontchartrain, which establishes the northern border of New Orleans, is on average one foot above sea level.<sup>185</sup>

New Orleans and its surrounding areas have experienced numerous floods from both the Mississippi River and hurricanes.<sup>186</sup> A major flood on the Mississippi River completely inundated New Orleans in 1927, and others following severe rainstorms damaged parts of the city in 1979 and 1995.<sup>187</sup> Several hurricanes have hit New Orleans, including Hurricane Betsy in 1965, Hurricane Camille in 1969, Hurricane Georges in 1998, and Hurricane Lilli in 2002.<sup>188</sup> The greatest threat from hurricanes is not wind, but storm-surge, which accounts for most of the damage and deaths caused by hurricanes.<sup>189</sup>

### Levees designed, built to address vulnerabilities

After Hurricane Betsy in 1965, federal and state governments proposed a number of flood control projects to deal with the threat of hurricanes and the flooding they might cause in New Orleans.<sup>190</sup> These included a series of control structures, concrete floodwalls, and levees along Lake Pontchartrain and several other waterways.<sup>191</sup> One of the major projects is formally called the Lake Pontchartrain and Vicinity, Louisiana Hurricane Protection Project.<sup>192</sup> This project included levees along



the Lake Pontchartrain lakefront, the 17th Street Canal, the London Avenue Canal, the Orleans Avenue Canal, the Intercoastal waterway, the Industrial Canal, the Mississippi River Gulf Outlet, and others.<sup>193</sup> Although the project was federally authorized, it was a joint federal, state, and local effort with shared costs.<sup>194</sup>

- <sup>1</sup> Exec. Order 12148, 44 Fed. Reg. 43239, 3 C.F.R. at 412, (1979 Comp.).
- <sup>2</sup> See Keith Bea, Cong. Res. Serv., Order No. RL 33064, *Organization and Mission of the Emergency Preparedness and Response Directorate: Issues and Options for the 109th Congress*, App. B: Evolution of Federal Emergency Authorities (Sept. 7, 2005) [hereinafter Bea, *Organizational Mission*].
- <sup>3</sup> See *Id.* at App. B; U.S. Gov't Accountability Off., Pub. No. GAO/T-RCED-93-46, *Disaster Management: Recent Disasters Demonstrate the Need to Improve the Nation's Response Strategy* (May 25, 1993) [hereinafter GAO, *Recent Disasters*].
- <sup>4</sup> See Keith Bea, Cong. Res. Serv., Order No. RL 31670, *Transfer of FEMA to the Department of Homeland Security: Issues for Congressional Oversight*, App. A: Summary of FEMA Authorities (Dec. 17, 2002) [hereinafter Bea, *Transfer of FEMA*].
- <sup>5</sup> See U.S. Gov't Accountability Off., Pub. No. GAO/RCED-93-186, *Disaster Management: Improving the Nation's Response to Catastrophic Disasters* (July 23, 1993) [hereinafter Bea, *Disaster Management*].
- <sup>6</sup> See Bea, *Transfer of FEMA*; GAO, *Disaster Management*.
- <sup>7</sup> Homeland Security Act of 2002, Pub. L. No. 107-296, Title V, 116 Stat. 2135 (2002).
- <sup>8</sup> See Bea, *Organization and Mission*; Federal Emergency Mgmt. Agency [hereinafter FEMA], News Release, *National Disaster Medical System* (Apr. 21, 2004) available at <http://www.fema.gov/news/newsrelease.fema?id=11927> (last visited Jan. 21, 2006).
- <sup>9</sup> See Bea, *Transfer of FEMA*.
- <sup>10</sup> See FEMA, *A Guide to the Disaster Declaration Process* (undated) available at [http://www.fema.gov/pdf/rrr/dec\\_proc.pdf](http://www.fema.gov/pdf/rrr/dec_proc.pdf) (last visited Jan. 21, 2006).
- <sup>11</sup> Interviews by Select Comm. Staff with City of New Orleans officials in New Orleans, LA (Nov. 3-10, 2005) [hereinafter Select Comm. New Orleans Interviews].
- <sup>12</sup> See Elizabeth B. Bazan, Cong. Res. Serv., Order No. RL 33090, *Robert T. Stafford Disaster Relief and Emergency Assistance Act: Legal Requirements for Federal and State Roles in Declarations of an Emergency or a Major Disaster* (Sept. 16, 2005).
- <sup>13</sup> Select Comm. New Orleans Interviews.
- <sup>14</sup> Keith Bea, Cong. Res. Serv., Order No. RS 21227, *The Emergency Management Assistance Compact (EMAC): An Overview*, 2 (Feb. 4, 2005).
- <sup>15</sup> See *Id.* at 1-5.
- <sup>16</sup> See *Id.* at 1-2.; <http://www.emacweb.org> (last visited Jan. 21, 2006).
- <sup>17</sup> Robert T. Stafford Disaster Relief and Emergency Assistance Act [hereinafter Stafford Act] 42 U.S.C. § 5122(1) (2005).
- <sup>18</sup> See FEMA, *The Disaster Process and Disaster Aid Programs*, (Apr. 4, 2005) available at <http://www.fema.gov/library/dproc.shtm> (last visited Jan. 22, 2006) [hereinafter, FEMA, *Disaster Process*].
- <sup>19</sup> Keith Bea, Cong. Res. Serv., Order No. RL 33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, 3-4 (Sept. 27, 2005).
- <sup>20</sup> See FEMA, *Disaster Process* (FEMA allows that, when an obviously severe or catastrophic event occurs, Governors may request a major disaster declaration prior to conducting a damage assessment).
- <sup>21</sup> See FEMA, *Disaster Process* (Specifically, FEMA provides three categories of disaster assistance: (1) individual assistance; (2) public assistance; and (3) hazard mitigation assistance. Individual assistance is a combined FEMA-State program that provides money and services to people in the affected area whose property has been damaged or destroyed and whose losses are not covered by insurance. Individual assistance from FEMA can consist of funds to rent temporary housing, grants to repair damage that is not covered by insurance, and grants for "necessary and serious needs" such as medical or funeral expenses. Individual assistance can also include federally subsidized loans from the U.S. Small Business Administration (SBA) to repair or replace homes, personal property or businesses that sustained damages not covered by insurance); See FEMA, *Disaster Process* at 4 (Public assistance funds, through grants or SBA loans, the repair, restoration, reconstruction or replacement of public facilities or infrastructure damaged or destroyed by a disaster. Eligible recipients include state and local governments and certain private nonprofit organizations, such as educational, medical, rehabilitation or permanent custodial care facilities. Recipients may use their public assistance funds for projects such as debris removal and repair of road systems, bridges, and/or water control facilities); See FEMA, *Disaster Process* at 4-5 (Hazard mitigation assistance supports measures to reduce or eliminate long-term risk to people and property from natural hazards and their effects. For eligible projects, the federal government pays up to 75 percent of the costs with states providing a 25 percent match. Eligible mitigation measures under this program include buying or relocating property located in high hazard areas (such as flood plains); elevating flood-prone structures; and, seismic rehabilitation of existing structures).
- <sup>22</sup> See Directive on Management of Domestic Incidents, 39 WEEKLY COMP. PRES. DOC. 10 280 (Feb. 28, 2003) (Known as Homeland Security Presidential Directive/HSPD-5).
- <sup>23</sup> See U.S. Dep't of Homeland Security, *National Response Plan* (Dec. 2004) at i [hereinafter *NRP*].
- <sup>24</sup> See U.S. Gov't Accountability Off., Pub. No. GAO-05-652, *Homeland Security: DHS' Efforts to Enhance First Responders' All-Hazards Capabilities Continue to Evolve*, 11-12 (July 11, 2005) [hereinafter GAO: *DHS' Efforts to Enhance Capabilities*].
- <sup>25</sup> See *NRP* at 1.
- <sup>26</sup> See *Id.* at 11.
- <sup>27</sup> DHS, *National Incident Management System*, 2 (Mar. 1, 2004 ) available at <http://www.dhs.gov/interweb/assetlibrary/NIMS-90-web.pdf> (last visited Jan. 22, 2006).
- <sup>28</sup> *Id.* at ix, 1-4.
- <sup>29</sup> See *NRP* at xi-xiii.
- <sup>30</sup> *Id.* at 11.
- <sup>31</sup> See *Id.* at ESF-i-iv.
- <sup>32</sup> *Id.* at ESF#1-1-5.
- <sup>33</sup> *Id.* at ESF#2-1-12.
- <sup>34</sup> *Id.* at ESF#3-1-8.
- <sup>35</sup> *Id.* at ESF#4-1-5.
- <sup>36</sup> *Id.* at ESF#5-1-5.
- <sup>37</sup> National Response Coordination Center (NRCC); Regional Response Coordination Center (RRCC); Joint Field Office (JFO).
- <sup>38</sup> *NRP* at ESF#6-1-8.

<sup>39</sup> *Id.* at ESF#7-1-6.

<sup>40</sup> *Id.* at ESF#8-1-13.

<sup>41</sup> *Id.* at ESF#9-1-7.

<sup>42</sup> *Id.* at ESF#10-1-13.

<sup>43</sup> *See Id.* (Depending on whether an incident affects the inland or coastal zone, either EPA or DHS/USCG serves as the primary agency for ESF 10 actions. For incidents affecting both, EPA is the primary agency with DHS/USCG serving as the deputy).

<sup>44</sup> *Id.* at ESF#11-1-12.

<sup>45</sup> *Id.* at ESF#12-1-6.

<sup>46</sup> *Id.* at ESF#13-1-9.

<sup>47</sup> *Id.* at ESF#14-1-6.

<sup>48</sup> *Id.* at ESF#15-1-5.

<sup>49</sup> *See GAO, Recent Disasters* (The notion that FEMA distinguishes “catastrophic” disasters from other incidents and makes specific plans for a different, proactive response to them builds on its experiences, problems, and lessons learned in past disasters, particularly Hurricane Andrew in south Florida in 1992. In that disaster, FEMA was too reactive—waiting for state and local governments to identify what they needed and then ask for it—when the hurricane had clearly overwhelmed the ability of state, local, and voluntary agencies to adequately provide victims with essential services, such as food and water, within 12 to 24 hours. Summarizing its review of FEMA’s response to Hurricane Andrew, GAO described the [then] federal strategy for responding to such disasters as deficient because it lacked provisions for the federal government to (1) immediately, comprehensively assess damages and the resulting needs of disaster victims and (2) provide food, shelter, and other essential services when victims’ needs outstripped what state, local and voluntary agencies could themselves provide).

<sup>50</sup> *Id.* at 43.

<sup>51</sup> *NRP* at CAT-3.

<sup>52</sup> *See Id.* at CAT-1-3 (According to the catastrophic incident annex, DHS is developing a “more detailed and operationally specific NRP Catastrophic Incident Supplement” (CIS) to this annex. The supplement will be designated “For Official Use Only” and published independently of the NRP base plan and annexes. As of November 2005, DHS had not yet published the CIS); *See Letter from Henry A. Waxman and Charlie Melancon, Members of Congress, to Michael Chertoff, Secretary of Homeland Security, Nov. 1, 2005* (on file with the Select Comm.) available at <http://www.democrats.reform.house.gov/Documents/20051101103226-17173.pdf> (last visited Jan. 22, 2006).

<sup>53</sup> *See NRP* at CAT-2-4.

<sup>54</sup> *See Id.* at CAT-3-5.

<sup>55</sup> *See Id.* at CAT-1.

<sup>56</sup> *Id.* at CAT-1.

<sup>57</sup> *Id.* at 3-4.

<sup>58</sup> *See DHS, Fact Sheet: Homeland Security Operations Center (HSOC)* (July 8, 2004) available at <http://www.dhs.gov/dhspublic/display?theme=30&content=3813> (last visited Jan. 22, 2006) [hereinafter *HSOC Fact Sheet*]. (Specifically, participants in the HSOC include the FBI, U.S. Coast Guard, Postal Inspection Service, CIA, U.S. Secret Service, DC Metropolitan Police Department, Defense Intelligence Agency, Federal Protective Service, New York Police Department, National Security Agency, Customs and Border Protection (DHS), Los Angeles Police Department, Immigration Customs Enforcement (DHS), U.S. Department of Energy, U.S. Environmental Protection Agency, Drug Enforcement Agency, U.S. Department of Interior (U.S. Park Police), U.S. Federal Air Marshal Service, Alcohol, Tobacco, and Firearms, U.S. Department of Defense, U.S. Department of State, U.S. Department of Transportation, U.S. Department of Veterans Affairs, National Capitol Region, Transportation Security Administration, National Geospatial Intelligence Agency, U.S. Department of Health and Human Services, FEMA, National Oceanic Atmospheric Administration, Public Affairs (DHS), State and Local Coordination Office, Science and Technology Directorate, Geo-spatial Mapping Office, Information Analysis Office, and the Infrastructure Protection Office).

<sup>59</sup> *NRP* at 24; *HSOC Fact Sheet*.

<sup>60</sup> *See NRP* at 70 (A National Special Security Event (NSSE) is a designated event that, by virtue of its political, economic, social, or religious significance, may be the target of terrorism or other criminal activity).

<sup>61</sup> *See Id.* at 22-23; *HSOC Fact Sheet*.

<sup>62</sup> *NRP* at 27-28, 91.

<sup>63</sup> *Id.* at 27-28, 40; Interview by Select Comm. staff with Michael Lowder, Deputy Director, Response Division, FEMA, in Washington, DC (Jan. 5, 2006).

<sup>64</sup> *NRP* at 28, 68.

<sup>65</sup> Stafford Act at § 5143(a).

<sup>66</sup> *NRP* at 4, 7.

<sup>67</sup> *Id.* at 34.

<sup>68</sup> *Id.* at 33-34.

<sup>69</sup> Joint Chiefs of Staff, Department of Defense, Joint Publication 3-26, *Homeland Security* [hereinafter Joint Chiefs, *Homeland Security*], (Aug. 2, 2005) at IV-4, available at [http://www.dtic.mil/doctrine/jel/new\\_pubs/jp3\\_26.pdf](http://www.dtic.mil/doctrine/jel/new_pubs/jp3_26.pdf) (last visited Jan. 22, 2006).

<sup>70</sup> *NRP* at 42.

<sup>71</sup> Joint Chiefs, *Homeland Security* at IV-1.

<sup>72</sup> Steven Bowman et al., Cong. Res. Serv., Order No. RL 33095, *Hurricane Katrina: DOD Disaster Response* at 2 (Sep. 19, 2005). [Hereinafter *Katrina: DOD Response*].

<sup>73</sup> Department of Defense, Directive 3025.1, *Military Support to Civil Authorities* (Jan. 15, 1993).

<sup>74</sup> 32 U.S.C. § 901 (2005).

<sup>75</sup> Joint Chiefs, *Homeland Security* at vii, IV-10-IV-15; *NRP* at 37.

<sup>76</sup> Bowman, *Katrina: DOD Response* at 3, 4.

<sup>77</sup> Civil support for incidents in Hawaii and the Pacific territories is provided by U.S. Pacific Command.

<sup>78</sup> Joint Chiefs, *Homeland Security* at IV-12; Bowman, *Katrina: DOD Response* at 3, 4.

- <sup>79</sup> Bowman, *Katrina: DOD Response* at 3, 4.
- <sup>80</sup> Joint Chiefs, *Homeland Security* at IV-10-12.
- <sup>81</sup> Lt. Gen. H Steven Blum, Chief, National Guard Bureau, *Types of Duty*, 1 (undated) (on file with the Select Comm., No. MMTF 00415-05).
- <sup>82</sup> *Id.*
- <sup>83</sup> *Id.*
- <sup>84</sup> Letter from Bob Riley, Governor of Alabama, to Donald Rumsfeld, Secretary of Defense (Sept. 2, 2005) (on file with the Select Comm.); Letter from Haley Barbour, Governor of Mississippi, to Donald Rumsfeld, Secretary of Defense (Sept. 4, 2005) (on file with the Select Comm.); Letter from Kathleen Babineaux Blanco, Governor of Louisiana, to Donald Rumsfeld, Secretary of Defense (Sept. 5, 2005) (on file with the Select Comm.); Memorandum from Gordon England, Deputy Secretary of Defense to Secretary of the Army and Acting Secretary of the Air Force (Sept. 7, 2005) (authorizing Title 32 status for Katrina Disaster Relief activities, on file with the Select Comm.).
- <sup>85</sup> Departments of the Army and the Air Force, Headquarters, Army Regulation 130-5 AFMD 10, *Organization and Functions of the National Guard Bureau* (Dec. 30, 2001).
- <sup>86</sup> *Hearing on Hurricane Katrina: Preparedness and Response by the Department of Defense, the Coast Guard, and the National Guard of Louisiana, Mississippi, and Alabama Before Select Comm.*, [hereinafter Oct. 27, 2005 Select Comm. Hearing] 109th Cong. (Oct. 27, 2005) (written response to questions for the record of Lt. Gen. H Steven Blum).
- <sup>87</sup> Chris Doane & Joe DiRenzo III, *Protecting Our Ports: A Coast Guard Operational Commander's Perspective of the Maritime Transportation Security Act of 2002 in 2004 U.S. COAST GUARD: THE SHIELD OF FREEDOM*, 124 (2004).
- <sup>88</sup> District Eight, U.S. Coast Guard, *District Eight Facts*, available at <http://www.uscg.mil/d8/d8facts.htm> (last visited Jan. 26, 2006).
- <sup>89</sup> See Debra Spar and James Dail, *Essays: The Democratic Accountability of Non-Governmental Organizations: Of Measurement and Mission: Accounting for Performance in Non-Governmental Organizations*, 3 Chi. J. Int'l L. 171, 180 note 1 ("Strictly defined, NGO stands for "non-governmental organization" and would thus include any group that does not fall under the purview of the government. Taken to the extreme, this would include private companies, religious congregations, and trade unions. For the most part, however, the term NGO is used to refer to organizations that (1) are tax exempt, (2) have a decisionmaking body separate from the government, (3) consist, at least in part, of volunteers and donations, (4) have a charter or mandate within a specific development arena, and (5) consist of a formal organization (in other words, are registered as organizations).").
- <sup>90</sup> 36 U.S.C. § 300101 (2005).
- <sup>91</sup> American Red Cross Museum, *History: The Federal Charter of the American Red Cross*, available at <http://www.redcross.org/museum/history/charter.asp> (last visited Jan. 22, 2006).
- <sup>92</sup> *Id.*
- <sup>93</sup> *Id.*
- <sup>94</sup> American Red Cross, *2004 Corporate Annual Report, Introduction*, 4, available at <http://www.redcross.org/pubs/#report> (last visited Jan. 23, 2006).
- <sup>95</sup> *NRP* at 3.
- <sup>96</sup> *Id.* at 12, ESF #6-5.
- <sup>97</sup> *Id.* at ESF #6-5.
- <sup>98</sup> *Id.* at 2.
- <sup>99</sup> *Id.* at ESF #6-3.
- <sup>100</sup> *Id.*
- <sup>101</sup> American Red Cross, *Tropical Storm and Hurricane Action Plan*, 1 (undated) [hereinafter American Red Cross, *Storm Action Plan*].
- <sup>102</sup> *Id.*
- <sup>103</sup> American Red Cross, *American Red Cross Responsibilities Under the Federal Response Plan* (Aug. 2001) (Internal Red Cross planning document on file with the Select Comm.).
- <sup>104</sup> American Red Cross, *Interim Shelter Operations Management Toolkit*, iii (Sept. 2005) (It is not clear to what extent this document was utilized in the Red Cross's response to Hurricane Katrina).
- <sup>105</sup> American Red Cross *Storm Action Plan* at 2 ("The chapters serving the affected area provide the initial incident response in their respective communities, report their activities and assessments and are augmented by human and material resources and guidance, in a coordinated manner, from the service area or national headquarters.").
- <sup>106</sup> Interview by Select Comm. staff with Joseph C. Becker, Sr. Vice Pres., Preparedness and Response, American Red Cross in Wash., D.C. (Oct. 14, 2005) [hereinafter Oct. 14, 2000 Red Cross Interview].
- <sup>107</sup> *Id.*
- <sup>108</sup> American Red Cross, *Storm Action Plan* at 20 (chart entitled, "Hurricane Response Plan Routine Business Model Structure").
- <sup>109</sup> *Id.* at 3.
- <sup>110</sup> *Id.* at 3.
- <sup>111</sup> *Id.* at 4.
- <sup>112</sup> *Id.* at 5.
- <sup>113</sup> *Id.*
- <sup>114</sup> Oct. 14, 2000 Red Cross Interview.
- <sup>115</sup> American Red Cross *Storm Action Plan* at 3.
- <sup>116</sup> *Id.* at 7.
- <sup>117</sup> *Id.* at 9.
- <sup>118</sup> *Id.* at 9-18.
- <sup>119</sup> *Id.*
- <sup>120</sup> *Id.* at 9.
- <sup>121</sup> *Id.* at 9.
- <sup>122</sup> *Id.* at 12.

- <sup>123</sup> *Id.*
- <sup>124</sup> *Id.*
- <sup>125</sup> *Id.* at 15.
- <sup>126</sup> *Id.* at 16.
- <sup>127</sup> *Id.*
- <sup>128</sup> See *NRP* at 6 (incidents typically managed at the lowest possible level), 8 (roles of local chief executive officer and governor), 15 (concept of operations); FEMA *supra* note 10; DHS *supra* note 27 at (“most incidents are managed locally”); Bazan *supra* note 12 (summary—federal resources supplement state and local).
- <sup>129</sup> See GAO: *DHS’ Efforts to Enhance Capabilities* at 7-8.
- <sup>130</sup> Keith Bea, et al., Cong. Res. Serv., Order No. RL 32287, *Emergency Management and Homeland Security Statutory Authorities in the States, District of Columbia, and Insular Areas: A Summary*, 6 (Mar. 17, 2004) [hereinafter Bea, *Statutory Authorities*].
- <sup>131</sup> See Emergency Management Assistance Compact, *Intrastate Mutual Aid Legislation*, available at <http://www.emacweb.org/?150> (last visited Jan. 23, 2006) (for a list of states that have intrastate mutual assistance compacts).
- <sup>132</sup> See Keith Bea, Cong. Res. Serv., Order No. RS 22235, *Disaster Evacuation and Displacement Policy: Issues for Congress*, 1-2 (Sept. 2, 2005) [hereinafter Bea, *Disaster Evacuation Policy*].
- <sup>133</sup> *NRP* at 8.
- <sup>134</sup> See Bea, *Disaster Evacuation Policy* 132 at 1-2.
- <sup>135</sup> See Bea, *Statutory Authorities* at 4.
- <sup>136</sup> See Bowman *Katrina: DOD Response* at 7-8.
- <sup>137</sup> See Bea, *Statutory Authorities* at 10.
- <sup>138</sup> *Id.* at 5-6.
- <sup>139</sup> See Keith Bea, Cong. Res. Serv., Order No. RL 32678, *Louisiana Emergency Management and Homeland Security Authorities Summarized* (Sept. 2, 2005) [hereinafter Bea, *Louisiana Authorities*].
- <sup>140</sup> See Keith Bea, Cong. Res. Serv., Order No. RL 32316, *Mississippi Emergency Management and Homeland Security Authorities Summarized* (Sept. 2, 2005) [hereinafter Bea, *Mississippi Authorities*].
- <sup>141</sup> See Keith Bea, Cong. Res. Serv., Order No. RD 21777, *Alabama Emergency Management and Homeland Security Statutory Authorities Summarized*, 1-5 (Sept. 2, 2005) [hereinafter Bea, *Alabama Authorities*] (a third statute, the Emergency Interim Succession Act, applies when continuity of government operations come into question and provides for the succession of powers for legislators and officers of political subdivisions).
- <sup>142</sup> *State Chief Executives Emergency Response: Hurricanes & Other Disaster Emergencies: State Of Alabama Experience* (on file with the Select Comm., Nos. 000659AL-000666AL).
- <sup>143</sup> *Id.*
- <sup>144</sup> Preparedness Division Technological Hazards Branch, *State of Alabama, State of Alabama Emergency Operations Plan* [hereinafter *AL Emergency Operations Plan*] 4-5 (Oct. 1, 2000).
- <sup>145</sup> *Id.* at 2-3.
- <sup>146</sup> Interview by Select Comm. Staff with Bruce Baughman, Director, State of Alabama Emergency Management Agency, in AL (Oct. 11-12, 2005).
- <sup>147</sup> See Bea, *Alabama Authorities* at 2.
- <sup>148</sup> See *AL Emergency Operations Plan*.
- <sup>149</sup> *Id.* at 1.
- <sup>150</sup> See Bea, *Alabama Authorities* at 2.
- <sup>151</sup> Miss. Code Ann. §§ 33-15-11 to 33-15-53 (2004).
- <sup>152</sup> *Id.*
- <sup>153</sup> *Id.* at § 33-15-2.
- <sup>154</sup> See Bea, *Mississippi Authorities* at 2.
- <sup>155</sup> *Id.* at 5.
- <sup>156</sup> The Disaster Improvement Grant Program Plans Sec., *Miss. Emergency Mgmt. Agency, Miss. Emergency Operations Plan, Volume II Miss. Comprehensive Emergency Mgmt. Plan*, p. Basic-2 (May 14, 199) (change log updated through Feb. 2003).
- <sup>157</sup> Miss. Code Ann. § 33-15-11 (2004).
- <sup>158</sup> See Bea, *Mississippi Authorities* at 1; Bea, *Alabama Authorities* at 4.
- <sup>159</sup> See Bea, *Mississippi Authorities* at 2-3; Miss. Code Ann. § 33-15-7 (2004).
- <sup>160</sup> See Bea, *Louisiana Authorities* at 1-3.
- <sup>161</sup> Office of Homeland Security and Emergency Preparedness, State of Louisiana, *Emergency Operations Plan*, 7 (April 2005) [hereinafter *LA Emergency Operations Plan*].
- <sup>162</sup> *Id.* at 7.
- <sup>163</sup> *Id.* at 9.
- <sup>164</sup> Louisiana Homeland Security and Emergency Assistance and Disaster Act, LA. REV. STAT. ANN. § 724 D (2003).
- <sup>165</sup> *Id.* at §§ 724-725.
- <sup>166</sup> *LA Emergency Operations Plan* at 1.
- <sup>167</sup> Office of Emergency Preparedness, City of New Orleans, *Comprehensive Emergency Management Plan*, (2004) at 7 [hereinafter *N.O. Emergency Management Plan*].
- <sup>168</sup> *Id.* at 4.
- <sup>169</sup> *Id.*
- <sup>170</sup> *Id.*
- <sup>171</sup> *Id.* at 51.
- <sup>172</sup> *Id.*
- <sup>173</sup> *Id.*

- <sup>174</sup> *Id.* at 54.
- <sup>175</sup> *Id.* at 48.
- <sup>176</sup> *Id.* at 50.
- <sup>177</sup> *Id.*
- <sup>178</sup> *N.O. Emergency Management Plan* at 45.
- <sup>179</sup> See Eric S. Blake, et al., Tropical Prediction Center, U.S. Dep't of Commerce, NOAA Technical Memorandum NWS TPC-4, *The Deadliest Costliest, and Most Intense U.S. Tropical Cyclones from 1851 to 2004 (and Other Frequently Requested Hurricane Facts* Aug. 2005) available at <http://www.nhc.noaa.gov/paststate.shtml> (last visited Jan. 24, 2006).
- <sup>180</sup> See National Hurricane Center, *Hurricane Preparedness: Storm Surge*, available at [http://www.nhc.noaa.gov/HAW2/english/storm\\_surge.shtml](http://www.nhc.noaa.gov/HAW2/english/storm_surge.shtml) (last visited Jan. 24, 2006).
- <sup>181</sup> See National Hurricane Center, *Hurricane Preparedness: Inland Flooding*, available at [http://www.nhc.noaa.gov/HAW2/english/inland\\_flood.shtml](http://www.nhc.noaa.gov/HAW2/english/inland_flood.shtml) (last visited Jan. 24, 2006).
- <sup>182</sup> Anu Mittal, U.S. Gov't Accountability Off., Pub. No. GAO-05-1050T, *Testimony Before the Subcommittee on Energy and Water Development, Committee on Appropriations, House of Representatives, Army Corps of Engineers: Lake Pontchartrain and Vicinity Hurricane Protection Project*, 2 (Sept. 28, 2005); R.B. Seed, et al., U. of Calif. At Berkely and Am. Soc'y of Civil Engineers, Rept. No. UCB/CITRIS – 05/01, *Preliminary Report on the Performance of the New Orleans Levee System in Hurricane Katrina on August 29, 2005*, 1-4 (Nov. 2, 2005) (support for subsidence); IEM, Inc., IEM/TEC04-070 r5, *Southeast Louisiana Catastrophic Hurricane Functional Plan*, 5 (Jan. 5, 2005) [hereinafter IEM, *Southeast Louisiana Hurricane Plan*] (support for “bowl” topography “Hurricane Pam”).
- <sup>183</sup> IEM, *Southeast Louisiana Hurricane Plan* at 5; *Hearing on Hurricane Katrina: Who's In Charge of the New Orleans Levees? Before Senate Comm. on Homeland Security and Governmental Affairs [Dec. 15, 2005 Senate Hearing]*, 109th Cong. (Dec. 15, 2005) (written statement of Max. L. Hearn, Executive Director, Orleans Levee District) at 1.
- <sup>184</sup> New Orleans District, U.S. Army Corps of Engineers, *Un-Watering Plan Greater Metropolitan Area, New Orleans, Louisiana*, 1 (Aug. 18, 2000) (While we use the term “sea level,” the technical measurement used by the Corps is National Geodetic Vertical Datum (NGVD) which was developed by observing the mean sea level height at various locations around North America).
- <sup>185</sup> New Orleans District, U.S. Army Corps of Engineers, *NGVD Datum Plane* (Apr. 15, 2005) available at <http://www.mvn.usace.army.mil/pao/response/NGVD.asp> (last visited Jan. 25, 2006).
- <sup>186</sup> Mittal, *Testimony* at 2.
- <sup>187</sup> See FEMA, *Disasters: Louisiana Severe Storm, Flooding Declared May 10, 1995*, available at <http://www.fema.gov/news/event.fema?id=2250> (last visited Jan. 25, 2006).
- <sup>188</sup> Mittal, *Testimony* at 2.
- <sup>189</sup> Richard D. Knabb, et al., National Hurricane Center, Dep't of Commerce, *Tropical Cyclone Report: Hurricane Katrina 23-20 August 2005*, 11, (Dec. 20, 2005); Mittal, *Testimony* at 2.
- <sup>190</sup> *Dec. 15, 2005 Senate Hearing* (written statement of Max. L. Hearn, Executive Director, Orleans Levee District at 2); R.B. Seed, et al. at 1-3.
- <sup>191</sup> Mittal, *Testimony* at 2.
- <sup>192</sup> Flood Control Act of 1965. Pub. L. No. 89-298, § 204, 79 Stat. 103, 1077 (1965) (The Flood Control Act of 1965 authorized this project).
- <sup>193</sup> *Dec. 15, 2005 Senate Hearing* (written statement of Col. Richard P. Wagenaar) at 1-2; Mittal, *Testimony* 182 at 3; The Industrial Canal is also known as the Inner Harbor Navigation Canal.
- <sup>194</sup> Interview by Select Comm. Staff with David Pezza, U.S. Army Corps of Engineers, (Dec. 9, 2005); Mittal, *Testimony* at 3.





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*"Preparing for an event like Hurricane Katrina or any natural disaster, we should never feel like we are completely prepared. We can always do better."*

Robert R. Latham, Jr.  
Executive Director,  
Mississippi Emergency Management Agency  
Select Committee hearing, December 7, 2005