



State of New Jersey

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

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☆☆
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5 April 2005

Honorable Richard J. Codey
Senate President
449 Mount Pleasant Avenue
West Orange, NJ 07052

Honorable Albio Sires
Speaker, New Jersey Assembly
303 58th Street
West New York, NJ 07093

Dear Senator Codey and Speaker Sires:

Subject: The Adjutant General Report to the Legislature on the
New Jersey Naval Militia Joint Command

In January 2004, P.L. 2004 c. 300 was enacted requiring the New Jersey State Department of Military and Veterans Affairs (DMAVA) to determine whether a viable and clearly defined mission exists for the New Jersey Naval Militia Joint Command (NJNMJC). The statute requires that if a mission exists for the NJNMJC that it be explained and that personnel and material assets required to fulfill the mission be outlined. If it is determined that no mission exists, justification needs to be provided to the Legislature.

As The Adjutant General, I considered a number of reports in order to make my recommendation to the Legislature on the mission of the NJNMJC. The first was a report prepared by members of DMAVA who were primarily of members of the NJNMJC, a report prepared by the New Jersey State Police (NJSP) which was requested by the Domestic Security Preparedness Task Force, and the Memorandum of Agreement (MOA) executed between the U.S. Coast Guard and the NJSP. All three reports are attached. Although the DMAVA review identified a waterborne mission for the NJNMJC, I have concluded that there have been a significant number of changes to the oversight and management of homeland security issues and that the NJSP do have primary responsibility for the waterborne mission. In addition, there are limited resources in the State's budget which should not be divided between two entities (NJSP and NJNMJC) providing a similar waterborne mission. Therefore, I could not, in good faith, identify a clearly defined mission for the NJNMJC. Following is a detailed discussion of my review and conclusions.

History

The NJNMJC was re-activated in 1999 by Governor Christine Todd-Whitman in a letter directing the Adjutant General to form such an entity by organizing the New Jersey Naval Militia and the New Jersey State Guard into one body. Essentially, the NJNMJC is a hybrid organization with the 1st Battalion being a true naval militia comprised of 95% actively drilling Navy and Marine Corps reservists, the 2nd Battalion performing as an “operational Naval State Guard” and the 3rd Battalion providing support and auxiliary functions as multi-service State Guard. The NJNMJC maintains an MOA with the Coast Guard that gives permission for reservists to drill and cites broad support areas where the NJNMJC could be augmentees. During rescue and recovery operations for September 11, 2001, a number of NJNMJC personnel were activated and utilized extensively during the period of September 2001 through January 2002. Most of them were members of the State Guard (2nd and 3rd Battalions). Related costs were in excess of \$1.4 million in 2001 and 2002. The justification for such a mobilization of this force at that time is unclear since that mobilization was contrary to the guidance set forth in National Guard Regulation (NGR) 10-4 (federal) in that the resources of the National Guard should be unavailable prior to the activation of state defense forces such as the New Jersey State Guard. This issue speaks to the heart of the NJNMJC’s ability to respond. Upon the assumption of my duties as Adjutant General in January 2002, I terminated the state active duty for members of the NJNMJC and stood down accessions.

DMAVA undertook an internal review of the basis for the establishment and utilization of the NJNMJC by convening a Committee of military members to assist me in my decision. In an effort to be all-inclusive, the Committee consisted primarily of members of the NJNMJC, but also included members of the New Jersey Army and Air National Guard, and DMAVA’s homeland security directorate. The internal Committee proposed the mission of the NJNMJC as: “Provide trained and ready components of the State defense forces to respond to the call of the Governor in the event of a natural disaster, manmade disaster, terrorist event, domestic disorder, and request for assistance from civil authorities, public service support or other missions as directed by the Governor or The Adjutant General.” **The operations identified are primarily waterborne security and support to homeland security missions.**

Because of the significant changes made in the New Jersey’s approach to homeland security operations since September 11, 2001, this initial study was submitted to the Governor’s office for further inter-departmental discussion. In accordance with the oversight of homeland security issues required by the Domestic Security Preparedness Act of 2001 (P.L. 2001 c. 246), the Governor’s office subsequently requested a review by the Domestic Security Preparedness Task Force (DSPTF). At two separate meetings, the Task Force discussed the internal Committee’s proposed mission for the NJNMJC. The DSPTF then delegated the final review to an Executive Committee consisting of a Governor’s office representative, the Attorney General, DMAVA, and the NJSP

Because the New Jersey National Guard primarily supports the State through the management of emergency operations by the NJSP, the State Police provided a review of the organization, structure, mission, resources and command and control of the NJNMJC.

Current Homeland Security Operations

Under the auspices of the Domestic Security Preparedness Act, oversight to the State's homeland security operations is provided by the Domestic Security Preparedness Task Force. Several departments participate and are involved in direct counterterrorism activities as well as protection of critical infrastructure—the Attorney General's Office, the NJSP, the Office of Counterterrorism, DMAVA, the Department of Transportation, Department of Environmental Protection, Department of Health and Senior Services, and the Department of Agriculture, to name a few. The State Office of Emergency Management, which is administratively located within the Division of State Police, coordinates the state's response to declared emergencies, coordinates state and local resources and supports local authorities under the Incident Command System ("ICS").

In an effort to more fully manage homeland security operations on a 24/7 basis, the NJSP created a Homeland Security Directorate, increased their overall force composition, and enhanced several units including the NJSP Marine Services Bureau. The NJSP Marine Services Bureau currently has an MOA with the U.S. Coast Guard that provides the NJSP Marine Services Bureau with enhanced law enforcement authority and impacts on several of the potential operations identified by the NJNMJC.

In December 2002, the New Jersey National Guard opened a new Homeland Security Center of Excellence with a state-of-the-art Joint Operations Center (JOC). Response forces are task organized and managed by senior officers. A command cell structure oversees all planning and current operations. The stationing of a Weapons of Mass Destruction Civil Support Team-Heavy (WMD-CST) was awarded to New Jersey in March 2004.

There are many other statewide Homeland Security efforts underway, including:

- Target-hardening activities such as those undertaken by the Critical Infrastructure Advisory Committee and the best practices identified by sector.
- Specific mass transportation security initiatives
- Special interest items such as school and mall security.
- Participation in a comprehensive exercise program with the Department of Homeland Security such as TOPOFF—a national exercise.
- Technology assessment.

- Focus on urban initiatives.
- NJSP's initiative with the Community Emergency Response Team (CERT) Program which trains state and local volunteers to assist their communities during an emergency.

Force Multiplier Issues

The New Jersey National Guard is experiencing federal mobilizations at an historic pace to support overseas operations on the Global War on Terrorism. Even at today's opstempo, the New Jersey National Guard (both Army and Air) is fully capable of maintaining a 24/7 Joint Operations Center (and have since July 2004), and fielding a National Guard Reaction Force in accordance with directives from the National Guard Bureau. (A National Guard Reaction Force must be capable of assembling a company-sized element within four hours and employ a battalion-sized follow-on element within 24 hours to perform critical infrastructure protection missions). New Jersey has been organized into two geographic task forces in order to comply.

An additional resource not available until 2004 is the stationing of a WMD-CST Heavy in New Jersey. This highly trained, specialized team consists of 22 fulltime Active Guard Reserve (AGR) members of the New Jersey Army and Air National Guard capable of responding 24/7 to any WMD event. The resources of this team have already been utilized extensively since 2002 in disaster preparations undertaken in response to specific threat intelligence as augmentees to out-of-state CSTs who were fully certified. It is anticipated that the New Jersey team will be fully validated this year.

Need Issues

Much has changed in port, waterway and overall homeland security since 2001 and 2002, which has greatly expanded the role for the NJSP Marine Services Bureau. The utilization of emerging technologies in tracking and sensor arrays assists both the U.S. Coast Guard and the New Jersey State Police Marine Services Bureau in ways not envisioned in 2001 and certainly not in 1999 when the NJNMJC was first re-organized and re-activated. The New Jersey State Police manage a statewide Community Emergency Response Team (CERT) Program that has produced over 4,300 volunteers in 160 teams all certified to augment the first responder community with an additional 1,100 in the training pipeline. Once trained and certified, these volunteers revert to supporting their local communities thus incurring virtually no overhead or centralized administration costs. In 2004, almost 100 New Jersey CERT volunteers were mobilized and sent to Florida to assist in hurricane recovery operations. Their costs were reimbursed by the federal government. At its peak, the NJNMJC had less than 400 members and currently there are 160 members actively drilling.

Command and Control Issues

NJSP identifies a conflict in that the bulk of the mission and operations identified by the NJNMJC are waterborne and already are provided by the State Police. Furthermore, in December 2004, the U.S. Coast Guard signed an agreement with the NJSP Marine Services Bureau delegating federal law enforcement powers on selected, critical portions of our waterways to NJSP. By virtue of the fact that the NJNMJC was organized as a force multiplier for the New Jersey National Guard, the command and control of the NJNMJC would be in question. NJSP concluded that this dual and potentially distracting command and control posture may lend itself to conflicts and a diminished ability for the State Police to perform its mission. In fact, the NJNMJC may distract from the performance of this mission.

Organizational Issues

The DMAVA report identifies that for the NJNMJC to be viable and obtain some federal recognition for potential access to federal resources, the organization needs to dramatically change. If continued, the two entities of New Jersey Naval Militia and the New Jersey State Guard must operate separately.

The New Jersey National Guard is a unique organization with its mix of federal and state response missions and capabilities. When called upon by the Governor to assist, the New Jersey National Guard can be mobilized to support operations in conjunction with the New Jersey State Police. However, the infrastructure of the National Guard in all states is borne by the federal government. They support the accession, equipping and training of all military members. Any military organization requires significant infrastructure such as a standing headquarters component. In the case of the NJNMJC, all costs would fall to the State of New Jersey.

Reference is made to the New York model. New York has two separate and distinct entities in their organizations—the New York Naval Militia is completely separate from the New York State Guard both in headquarters management and in membership. This means that the preponderance of their members (95% of the 4,000 by regulation) of the New York Naval Militia are already actively drilling federally recognized Navy, Marine Corps and Coast Guard Reservists. By contrast, approximately 40 members (1st Battalion) of the NJNMJC are actively drilling Navy, Marine Corps and Coast Guard reservists. And although New Jersey has the same 95% requirement, it was only ever applied to the 1st Division because of the merged structure between the New Jersey Naval Militia and the New Jersey State Guard. It is important to note that the New York State

Police do not have any waterborne service units, thus the New York Naval Militia does fulfill that mission for areas other than New York City where active marine coverage is provided by the city police and fire waterborne units. Finally, the New York Naval Militia has been in existence without interruption for over 100 years, is an integral part of the New York Department of Military and Naval Operations with an annual budget of over \$300,000 and costs allocated to boats of \$1-1.5 million.

Funding Issues

The issue of funding cannot be underestimated. DMAVA's internal Committee review projected costs at \$706,800 for Years 1-3. These costs are for initial start-up only and do not include any mobilization costs as incurred in 2001-2002 (\$1.4 million). Given today's fiscal environment, if resources are directed to the NJNMJC, an assumption can be made that the diversion of these resources will directly impact the New Jersey State Police budget. Limited state resources available for waterborne security would then be diluted by having two separate entities performing the same mission and competing for similar funding.

Unresolved Issues

There have been a number of issues regarding the utilization and management of the NJNMJC that have surfaced since 2002. There are significant concerns regarding the lack of security clearances and background checks among the members, the lack of fitness requirements, the lack of training guidance, the lack of accession criteria, integrity in the rank assignments, and overall liability issues. Bottom line, no regulations governing the NJNMJC were ever adopted by the previous Adjutant General prior to their mobilization. Draft regulations were finalized in 2003 but have not been adopted by DMAVA pending this review. A legal review indicates that a statutory change is needed in order for the NJNMJC to participate in what the internal Committee proposed as part of the NJNMJC mission in homeland security, aid to localities (N.J.S.A. 38A:3-6.1 Appendix C). In summary, these policy issues would need to be resolved with appropriate legislation and regulations.

Conclusion

The utilization of the New Jersey Naval Militia and the New Jersey State Guard are clearly outlined in New Jersey Statute (N.J.S.A. 38A:1-1, and 38A:1-3) to assist the New Jersey National Guard in the State mission. However there have been a significant number of changes in how New Jersey manages homeland security issues since 2001.

Honorable Richard J. Codey
Honorable Albio Sires

5 April 2005

1. The Domestic Security Preparedness Act outlines responsibilities of the Domestic Security Preparedness Task Force to include oversight of homeland security, critical infrastructure, WMD management, etc.
2. The New Jersey State Police have re-organized and enhanced their infrastructure both in personnel and equipment with a focus on homeland security and counter-terrorism activities. Their waterborne mission as provided by the New Jersey State Police Marine Services Bureau has broadened and they now have federal law enforcement powers in an MOA with the U.S. Coast Guard. This is in significant contrast to the NJNMJC MOA with the Coast Guard that only allows for support and permission for reservists to drill with the NJNMJC.
3. In accordance with NGR 10-4, the NJNMJC is a resource of last resort—only after New Jersey National Guard resources are unable to fulfill their mission. The New Jersey National Guard is still fully capable of meeting State mission requirements.
4. To be effective, significant changes would need to be made to the organization of the NJNMJC. Statutory and regulatory changes and a structural re-organization would need to be made. Members need to comply with fitness requirements and background checks would need to be initiated. Not addressed in any attached review is the administrative burden this would place on DMAVA. Changes aside, there are still concerns from the New Jersey State Police regarding the command and control of the organization during operations.
5. Funding would need to be provided and competing interests would be the New Jersey State Police and potentially the first responder community as well.
6. The CERT Program and other infrastructure developed since September 11, 2001 provide significant volunteer resources to the management of emergency operations. This was done efficiently and cost effectively without the overhead costs that a military organization would incur such as in a headquarters staffing.

Notwithstanding the internal DMAVA Committee report, but taking into account New Jersey's well defined and comprehensive plan to respond to homeland security emergencies, and the New Jersey National Guard's capability to support the State mission, I could not conclude a clearly defined mission for the NJNMJC as required by P.L. 2004 c. 300.

Sincerely,



GLENN K. RIETH
Major General
New Jersey National Guard
The Adjutant General

Honorable Richard J. Codey
Honorable Albio Sires

5 April 2005

Enclosures:

1. Committee Report on the NJNMJC
to The Adjutant General
2. New Jersey State Police Report
3. Coast Guard Memorandum of Agreement
with the New Jersey State Police



COMMITTEE REPORT
on the
NEW JERSEY NAVAL MILITIA
JOINT COMMAND
(NJNMJC)
to
THE ADJUTANT GENERAL

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EXECUTIVE SUMMARY

The National Guard is a full partner in the Global War on Terrorism. Fifty percent of the military members serving in Iraq and Afghanistan are Guard and Reserve. This year, the New Jersey Army National Guard is experiencing historic mobilizations. More than 60 percent of the New Jersey Army National Guard will be deployed to support Operation Iraqi Freedom, Operation Enduring Freedom in Guantanamo Bay, Cuba and the Sinai. Beyond the involvement of the New Jersey Army National Guard overseas operations, is the need for additional resources in the ports as articulated in the Coast Guard letter at Appendix A. Additionally, the New Jersey Air National Guard continues to support all operations stateside daily and overseas on a regularly scheduled rotational basis.

Given this current opstempo for the New Jersey Army and Air National Guard, the utilization of a State Defense Force such as the New Jersey Naval Militia Joint Command (NJNMJC) is a logical solution given their proven ability to be a force multiplier. P.L.2004 c.300 required NJ Department of Military and Veterans Affairs to study the need for a NJNMJC. The Department of Military and Veterans Affairs recommends the continuation and further development of the NJNMJC as follows:

- To best position the organization for federal recognition, re-organize the three currently existing divisions into two distinct organizations—the State Guard and the Naval Militia under the NJNMJC.
- Implement the draft regulations that will address at a minimum security checks, fitness, accession criteria, and training in accordance with federal and state statutes as well as compliance with NGR 10-4.
- State funds need to be appropriated. The projected total costs for Years 1-3 are \$706,800.
- In accordance with the findings of the Attorney General, seek a change to N.J.S.A.38A:3-6.1 to allow the NJNMJC to provide aid to localities, a key component in homeland security missions

BACKGROUND

On January 14, 2004, the Governor signed P.L. 2004 c.300 requiring that “the New Jersey Department of Military and Veterans Affairs review the activities of the New Jersey Naval Militia Joint Command (NJNMJC) and determine whether a viable and clearly defined mission exists for that command.” That legislation also emphasized the increasing importance of ensuring that the roles of the various security and safety related agencies are clearly defined to facilitate coordination in the prevention of and response to emergencies. The results of the review, including a description of the activities of the NJNMJC and an assessment of whether or not the NJNMJC has a viable and clearly defined mission, were to be included in a report prepared by the Adjutant General (TAG). If it was concluded that such a mission exists, the report is to contain (1) an explanation of the mission and (2) specify what personnel and material assets are required to adequately fulfill the mission. If there is no such mission, the report is to include an explanation of why such a mission does not exist. The report is to be submitted to the Governor, the President of the Senate, the Speaker of the General Assembly, and the Chairpersons of the Senate Law and Public Safety and Veterans’ Affairs, Assembly Homeland Security and State Preparedness and Assembly Military and Veterans’ Affairs Committees.

The Naval Reserve of New Jersey was organized by an act of the New Jersey Legislature in 1895. The stated purpose of this organization was to defend the coast, harbors, and waterfront property. Following the passage of the Federal Naval Reserve Law of 1916, the name was changed to the Naval Militia of New Jersey. Ultimately, the unit evolved into a brigade composed of three divisions, each having several divisions. Members of the Naval Militia fought in the Spanish-American War, World War I, and World War II reaching a peak strength of 3,590 during the Korean Conflict. By 1963, the command had been deactivated and absorbed into the U.S. Naval Reserve.

In a memorandum dated February 21, 1999, Governor Whitman directed that the New Jersey Naval Militia and the New Jersey State Guard be reactivated and organized into a single joint regiment to be designated as the New Jersey Naval Militia Joint Command (NJNMJC). However, unlike its predecessor, the NJNMJC was formed as a hybrid organization with the 1st Division being a true naval militia comprised of actively drilling naval and Marine Corps reservists, the 2nd Division performing as an operational Naval State Guard, and the 3rd Division providing support and auxiliary functions with multi-service state guard. The concept of operations differs from a traditional reserve or guard unit in that it is based on volunteerism. Essentially, each member is required to donate two days each month for training or actual missions in support of state and federal agencies. Additional mission requirements could result in being placed on state active duty with or without pay and allowances.

The primary purpose of this reconstituted unit was to provide the Governor with a military waterborne force, which would act as a force multiplier for essential state and federal missions. It was not intended to compete for missions, but rather to augment and provide capabilities where none existed previously. Following activation, the NJNMJC participated in

several major events (e.g. Hurricane Floyd, OPSAIL 2000) and was employed extensively in a variety of roles after 9/11.

On September 11, 2001 members of the 2nd Division, New Jersey Naval Militia, assigned to Patron 10, placed one vessel, PBU 23-1, (Patrol Boat Utility), a 23' aluminum convention displacement hull with enclosed cabin, equipped with radar, global positioning device, depth indicator, marine hailer, VHS radio, and powered by twin 1989 outboard motors, at the disposal of the United States Coast Guard and State Guard Units. The vessel was deployed for the purpose of security at and around the World Trade Center (WTC) Site. During the weeks following the disaster, a second vessel, PBU 23-2 was made available to assist. A third vessel, PBU 23-4, was placed in service in November 2001. The following is a list of missions that were accomplished from September 11, 2001 to July 30, 2002:

1. Waterborne security at the bases of the George Washington Bridge
2. Daylight vessel traffic control on the Hudson River, north of the George Washington Bridge
3. Standby vessel for search and rescue detail Coast Guard Station Sandy Hook, NJ
4. Transport of military personnel and equipment from NJ to North Cove (Ground Zero)
5. V.I.P. transportation and security detail for Liberty State Park tribute events during October 2001
6. 192 days of water-borne security assisting naval personnel at Naval Weapons Station Earle
7. 180 days of continuous daylight patrols assisting the NJ State Police at Salem Nuclear Generating Station, Salem, NJ
8. Assisted with security in Jamaica Bay, NY during the aftermath of the crash of Flight 194, Kennedy Airport

In addition, the following land-based missions were assigned and accomplished:

1. Personnel to man the military Joint Operations Center
2. Chaplain services at Ground Zero and the Staten Island Logistics Support Base
3. Development and presentation of an anthrax awareness program to all N.J. Army National Guard troops in the field

4. Physical security augmentation at Fort Dix and NAES Lakehurst
5. Logistical support at Ground Zero for the Disaster Medical Assistance Team (DMAT)
6. Warehouse management for the Salvation Army

In 2002, there were numerous issues that surfaced regarding the structure and organization of the NJNMJC. There were a number of allegations of unfairness in the accession process. At that time, the NJNMJC had never implemented regulations as directed by Governor Whitman in her memorandum. Accession criteria were not codified as any official process subjecting DMAVA and the State to potential liability. More importantly, there is a lack of comprehensive security or background checks (with the exception of local municipal arrest records), a lack of criteria regarding grade/rank assignments, and no medical or fitness criteria. A significant number of NJNMJC personnel had been on state active duty since September 11, 2001, performing the previously cited operations. Almost \$1.4 million and more than 8,100 mandays had been expended and additional workers compensation dollars were spent for those members who had incurred injuries.

Legal and organizational review found that the merging of the two statutorily district concepts (State Guard and Naval Militia), while not a violation of New Jersey (N.J.S.A. 38A) or federal statutes (32 U.S.C.109) nevertheless, created confusion regarding the role of members and the potential ability to obtain federal recognition similar to the New York model. In addition, further legal review found that the activation of the NJNMJC members in a State active duty status ran contrary to guidance set forth in NGR 10-4 in that the resources of the National Guard were ready available prior to the activation of state defense forces such as the State Guard. Finally, for a 300+ member organization, almost one third were assigned to the headquarters staff in senior positions, thus requiring a comprehensive review of the organization.

As a result, in April 2002, The Adjutant General ordered that the NJNMJC stand down accessions until such time regulations could be implemented. Regulations had been drafted that comply with all federal and state statutes as well as the new threat environment. Those regulations are pending the results of this study.

In the intervening period, the NJNMJC has been developing courses and participating in the following training:

1. First Aid (2002)
2. WMD/Counterterrorism (2002-2003)
3. Professional Development Course (2003)
4. USCG Boating Safety/Team Coordination Course (2004)

5. Chief Petty Officer Development Course
 - a. April – May 2004
 - b. Mandatory for all E-7 through E-9

6. Basic Military Training (BMT)
 - a. Suspended until recruiting resumed
 - b. Includes IET, Militia Enlisted Basic Indoctrination (MEBI), and Officer Basic Indoctrination (OBI)

7. Community Emergency Response Training (CERT - 2004)

8. Incident Command System (ICS – 2005)

In order to accomplish this review, The Adjutant General convened a NJNMJC Study Committee consisting of members of the NJ Army and Air National Guard, the NJNMJC, Homeland Security, and the Joint Operations Center (J5/7).

LEGAL

The Staff Judge Advocate (SJA) finds the Study / Report to be legally sufficient in that it complies with the directive of the New Jersey Legislature set forth in L. 2004, c. 300 (S 2309 and A 3019). In addition, the SJA finds the recommendations to be consistent with the findings and the findings to be supported by the evidence considered by the committee as well as the general knowledge of the committee members not subject to dispute.

In response to a request from The Adjutant General regarding the legal validity of the structure of the NJNMJC, the Office of the Attorney General, Division of Law, rendered a legal opinion concluding that under New Jersey law it is permissible for the NJNMJC to serve as the command group for both the Naval Militia and the State Guard. The opinion also concluded that as a matter of state law the structure of the NJNMJC does not prohibit the Naval Militia from obtaining available federal resources. However, the opinion did not answer federal questions of law and added that the federal government may reach a different conclusion regarding whether the structure would comply with the statutory requirements for obtaining federal resources. The opinion stated that a structure where the Naval Militia is not in a joint command with the State Guard would enhance the likelihood of obtaining federal resources and that any change in structure is a policy decision and not a legal question under state law. The SJA concurs with that opinion.

The SJA recommends promulgation of draft regulations concerning the administration, discipline, training and standards of the NJNMJC. The SJA cautions that the regulations be consistent with and reflect the policy found in applicable statutes and regulations: Naval Militia - 10 U.S.C. 311, 10 U.S.C. 7851 through 7854, N.J.S.A. 38A:1-1 and 38A:-3, N.J.S.A. 38:8-1, and the State Guard - 32 U.S.C. 109, N.J.S.A. 38A:1-1 and 38A:1-3, and National Guard Regulation (NGR) 10-4.

The SJA also advises that since both the Naval Militia and the State Guard are considered components of the “organized militia of New Jersey,” N.J.S.A. 38A:1-1(a) and 38A:1-3(a), the New Jersey statutes that pertain to the “militia” or “organized militia” (e.g., N.J.S.A. 38A, Chapter 4 - Personnel of the Organized Militia - General Provisions; Chapter 5, Officers; Chapter 6, Enlisted Members), would apply to the Naval Militia and the State Guard.

Regarding the State Guard, the SJA further advised that the regulations should not fall outside the general scope of the mission and organization outlined in NGR 10-4 (State Defense Forces). For example, NGR 10-4, paragraph 5a, states that “the mission of a State Defense Force, as conceived by these regulations, is to provide an adequately trained and organized State military reserve force which would be under the exclusive control of the governor. It would be capable of accomplishing those State emergency responsibilities normally assigned to the National Guard, when that force is federalized or otherwise not available to the needs of the governor. In addition, they would be available to perform any such missions as the governor directs, within Federal and State laws concerned.”

Regarding State Guard organization, NGR 10-4, paragraph 6a, states that the operations and activities of a State Defense Force (State Guard) “are supplemental to the state mission of the National Guard during peacetime and are considered to be of a constabulary nature and not that of combat forces.” Paragraph 6 of the regulation provides that “priority for any future Federal support” will be given to those states whose State Guard “is considered most appropriate to accomplish the general missions outlined” in the regulation (paragraph 6b). The SJA advises that any regulations should comply with the guidance set forth in NGR 10-4.

In a final review of this report, the Attorney General found that the Naval Militia and the State Guard may **not** be called to active or inactive duty to provide aid to localities in circumstances which may threaten or are a danger to the public health, safety and welfare. (N.J.S.A.38A:3-6.1 See Appendix C) A statutory change will be needed for the NJNMJC to fully participate in the homeland security mission as a force multiplier and as envisioned in this report.

DISCUSSION AND RECOMMENDATIONS

There is undisputed documentation that the members of the NJNMJC provided valuable services during and in the aftermath of September 11, 2001. In the Global War on Terrorism and with the transformation of both the Army and Air National Guard, more emphasis is being placed on the federal utilization of the National Guard. In 2004, mobilization of the New Jersey Army National Guard (NJARNG) reached historic proportions with better than sixty percent of the NJARNG mobilized and deployed overseas. Ongoing rotations of the New Jersey Air National Guard (NJANG) in AEFs and in support of Operation Iraqi Freedom, Operation Enduring Freedom, and Operation Noble Eagle will continue to tax NJANG resources. Finally, gaps in the ability to cover all maritime missions are clearly articulated by the Coast Guard (Appendix A).

With a continuing opstempo across the country among Guard and Reserve, there is growing interest in the development and utilization of state defense forces. Nationally, there are seven states with organized Naval Militias and twenty-seven states and one territory with a state defense force or state guard. New York State has the most robust and oldest organization. The New York Naval Militia is separate from the New York State Guard and, therefore, has federal recognition.

Given the unrelenting opstempo, the NJNMJC can be a formidable force multiplier. The volunteerism of their members and their motivation to serve the State is well documented. The membership also reflects many specialties that can be utilized in multiple homeland security operations. It is therefore recommended that the New Jersey Naval Militia Joint Command continue to develop its organization with a modification to their mission statement, changes to the organizational structure and the adoption of regulations by DMAVA that will address the issues of background checks, medical fitness, training requirements and accession and procedural criteria.

Legal review indicates that the organization complies with federal and state statutes. Recommended changes to the organizational structure will best position the NJNMJC to obtain federal recognition. Changes to the rank structure at headquarters are in keeping with the current membership. Rank structures in the military increase with force structure expansion and are reflected as such. Finally, the DMAVA regulations will reflect the requirements for activation as outlined in NGR 10-4.

Continued development of the NJNMJC will require the commitment of state resources. Currently, no funds are allocated and the NJNMJC uses the Plainfield Armory for training, which remains open solely for their use. Projected total costs for year 1 just to initiate operations are \$92,100; to bring existing equipment up to standards for continued use would require projected total costs of \$180,800 for Year 1, \$234,600 for Year 2; and \$291,400 for Year 3.

REVISED MISSION STATEMENT

“Provide trained and ready components of the State defense forces to respond to the call of the Governor in the event of a natural disaster, manmade disaster, terrorist event, domestic disorder, and request for assistance from civil authorities, public service support or other missions as directed by the Governor or The Adjutant General.”

OPERATIONS

During the course of this study, a number of potential operations or activities that could be performed by the NJNMJC were identified. The original concept of putting a waterborne force at the disposal of TAG still exists. However, there are a number of land-based functions that can also be performed in support of the NJNG. Thus, the following listing of specified tasks is divided into maritime and ground activities.

It is anticipated that waterborne functions will be performed primarily by the Naval Militia. Conversely, land-based operations will be primarily handled by ground elements of the State Guard. Nevertheless, there is little doubt that there may be substantial overlap as dictated by mission requirements. In addition, all potential operations are contingent on the appropriate training certification of personnel and the availability of resources and equipment.

Maritime Specified Tasks

1. Provide waterborne support to the state’s homeland security program
2. Provide specialized, trained naval personnel, and their equipment in time of state emergencies, e.g. snow removal, hurricanes, floods, and etc.
3. Support Family Assistance Teams/SRP (e.g. attorneys, chaplains).
4. Provide waterborne patrol and surveillance involving critical infrastructure or power plants.
5. Support waterborne surveillance requirements for the NJNG Drug Task Force.
6. Assist the Marine Police and other Law Enforcement agencies with maritime surveillance requirements.
7. Provide technical assistance to the maritime facets of the State’s weapons of mass destruction program.
8. Assist with environmental spill management as needed by NJDEP and USCG.
9. Support the NJ Emergency Management System with disaster relief support and assistance.

10. Provide support as requested to NJNG special projects.
11. Provide training for specialized maritime needs (e.g. navigation)
12. Conduct boat safety checks at the request of the Marine Police.
13. Assist the USCG with maintenance of inland waterway navigational aids.
14. Conduct classes on boat safety and operation on public waterways.
15. Provide private boat registration checks for NJ Department of the Transportation.
16. Provide maritime services and support to local and county governments.
17. Assist all governmental entities with port security matters by leveraging personnel who have expertise in the maritime industry. Collect open source intelligence related to port security.

Ground Specified Tasks

1. Provide staff expertise and support to the NJDMAVA Joint Operations Center (JOC) by serving as shift augmenters and a trained backup force.
2. Assist at the various County Offices of Emergency Management (OEMs) to provide a resident liaison to DMAVA. This reduces the manning requirements on DMAVA, as these Guardsmen are able to function as various equipment operators and or responders in lieu of staging at the County OEMs.
3. Support the NJ State Police Office of Emergency Management by providing community emergency response team (CERT) qualified instructors who completed the Federal Emergency Management Agency's (FEMA) CERT Training.
4. Provide specialized medical training, first aid instruction, and safety awareness to first responders.
5. Certify in the FEMA incident command system (ICS) and develop proficiency and expertise by exercising these ICS concepts at training assemblies.
6. Provide disaster relief support to Municipal, County, or State agencies tasked with this mission.
7. Provide trained and experienced professionals to various public service facilities to ensure their continued, and uninterrupted, service to the community in times of natural disasters or other emergencies.

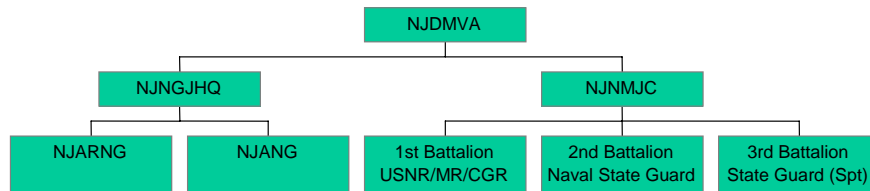
8. Provide family assistance teams and soldier readiness preparation (SRP) specialized support (JAG, Chaplain) to NJ National Guard Troops which are in the process to be, or have been, deployed.

ORGANIZATION

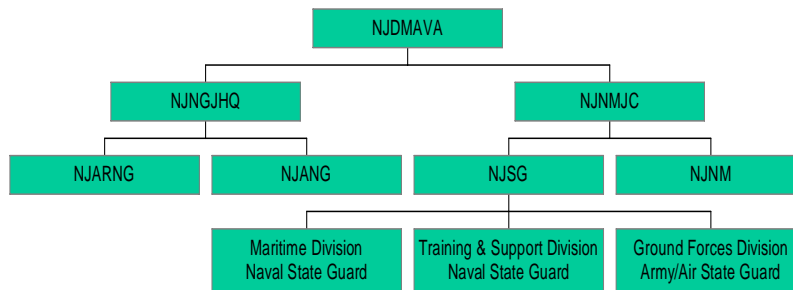
A chart of the current organization of the NJNMJC is attached. This scheme reflects the governor's reactivation authorization. In keeping with the new Joint Headquarters configuration required by NGB, it is recommended that the command be reorganized into Naval Militia and State Guard components operating under the NJNMJC. Manning requirements are reflected for the headquarters component. Specific Division manning requirements will be developed.

Force structure will be defined primarily by assigned missions, approved strength, and available equipment. The organizational structure of the NJNMJC is necessarily confined to a small staff of both NJNM and NJSG personnel for administration. The personnel recruited for this unit come with their own structure. For instance, it is anticipated that a recruiting priority will be Naval Mobile Construction Division 21 at Lakehurst, which will function with its existing organizational structure under NJNMJC tasking. NJNM and the Maritime Division of the State Guard structures are a function of the number of boats assigned. Each vessel will require five crews each containing an OIC/Coxswain (E6-01), Boatswain's Mate (E4-E6), Engineman (E4-#6), and two Seamen (E3). In addition, a dedicated maintenance staff will be required consisting of ten individuals (E4-W4) for every three boats. Division staffs will be designed to accommodate a complement of 3,000. Aggressive recruiting efforts will be pursued on a voluntary basis to expand the force structure from 475 in Year 1 to 1,205 in Year 3. Current membership is at 160. Due to the cessation of accessions, an additional 130 applications are pending.

Current Organization



Proposed Re-Organization



PROPOSED NJNMJC HEADQUARTERS STAFF POSITIONS

LN	NO.	BILLET NAME	RANK
01		COMMAND GROUP	
01	100	O COMMANDER	O7
01	101	O DEPUTY CDR	O6
01	100	E COMMANDER MASTER CHIEF	E9
01	101	O FLAG LIEUTENANT	O3
01	102	O CHIEF OF STAFF	O6
01	103	O COMMAND SURGEON	O6
01	104	O INSPECTOR GENERAL	O5
01	105	O PUBLIC AFFAIRS OFFICER	O5
01	106	O COMMAND CHAPLAIN	O5
01	107	E FLAG YEOMAN	E7
02		STAFF SECTIONS	
02	101	O DIR OF ADMIN, J1	O5
02	102	O ASST J1	O5
02	103	O STRENGTH MAINTENANCE OFFICER	O3
02	104	O ADMIN SUPV	O2/WO
02	105	E LEADING PO	E8
02	106	E YEOMAN	E6
03	101	O DIRECTOR OF INTELLIGENCE, J2	O5
03	102	O ASST J2	O5
03	103	O SECURITY STAFF O.	O4
03	104	O WEATHER STAFF OFFICER/AEROGRAPHER	O4
03	105	E INTEL LEADING PO	E9
03	106	E INTEL PO	E6
04	101	O DIRECTOR OF OPERATIONS, J3	O5
04	102	O PLANS AND OPS STAFF O	O5
04	103	O TRAINING SPT O	O5
04	104	O OPS STAFF OFF (WMD)	O/WO
04	105	O OPS STAFF OFF (EMER OPS)	O/WO
04	106	O OPS STAFF O (BOAT CREW EXAMINER)	O/WO
04	107	E LEADING PO	E9
04	108	E OPS PO	E7
04	109	E YEOMAN	E5
04	110	E YEOMAN	E4
05	101	O DIRECTOR OF LOGISTICS, J4	O5
05	102	O ASST J4	O5
05	103	O COMPTROLLER/PAYMASTER	O/WO
05	104	O SUPPLY STAFF OFFICER	O4
05	105	E LEADING PO	E8
05	106	E STOREKEEPER	E7
05	107	E STOREKEEPER	E6
06	101	O CIVIL MILITARY RELATIONS OFF , J5	O5
06	102	O ASST J5	O5
06	103	O PLANS & OPERATIONS OFFICER	O4
06	104	O CIVIL ENGINEER OFFICER	O4
06	105	O MEDICAL OFFICER	O5
		STAFF SECTIONS (CONT.)	

06	106	E	ADMIN SUPERVISOR	E8
06	107	E	YEOMAN	E6
07	101	O	COMMUNICATIONS STAFF OFF,J6	O5
07	102	O	ASST COMM STAFF OFF	O5
07	103	E	LEADING PO	E8
07	104	E	RADIOMAN/ELECTRONICS TECH	E6
08	101	O	CHEMICAL STAFF OFFICER	O5
08	102	E	LEADING PO	E7
09	101	O	DIRECTOR OF INFO MGMT	O5
09	102	O	ASST DIR	O3
09	103	E	LEADING PO	E8
10	101	O	JUDGE ADVOCATE GENERAL	O6
10	102	O	JUDGE ADVOCATE GENERAL	O5
10	103	O	JUDGE ADVOCATE	O5
10	104	O	JUDGE ADVOCATE	O4
10	105	O	JUDGE ADVOCATE	O4
10	106	E	LPO	E7
10	107	E	LEGALMAN	E6
10	108	E	LEGALMAN	E4
11	101	O	CHAPLAIN	O5
11	102	O	CHAPLAIN	O4
11	103	O	CHAPLAIN	O4
11	104	O	CHAPLAIN	O4
11	105	O	CHAPLAIN	O4
11	106	E	LPO	E7
11	107	E	REL PROG SPEC/CHAPLAINS ASST	E5
11	107	E	REL PROG SPEC/CHAPLAINS ASST	E5

EQUIPMENT

The following is the list of the current inventory of NJNMJC watercraft and their material condition:

Monarch 23 foot aluminum patrol boats

1. PBU 23-1. Hull is sound with no evidence of crevice corrosion. There is minor pitting on bottom normal to an 18 year old boat. The two 150HP engines, at or near their useful service life, are operational but considered unreliable due to excessive hours. Electronics and safety equipment are installed or available. Re-commissioning will render boat operational and seaworthy at approximately \$24,000.
2. PBU 23-2. Hull is sound with no evidence of crevice corrosion. There is minor pitting on bottom normal for an 18 year old boat. Two 150 HP engines, at or near their useful service life, are operational but considered unreliable due to excessive hours. Electronics and safety equipment are installed or available. Re-commissioning will render boat operational and seaworthy at approximately \$24,000.
3. PBU 23-3. Hull is sound with no evidence of crevice corrosion. There is minor pitting on the bottom normal for an 18 year old boat. The two engines are unserviceable and have been cannibalized for parts. The interior seats and lockers are missing. Electronics and safety equipment are available. Installation of two new engines, seats and lockers, electronics and re-commissioning will render boat operational and seaworthy. Re-commissioning will render boat operational and seaworthy at approximately \$28,000.
4. PBU 23-4. Hull is sound with no evidence of crevice corrosion. There is minor pitting on the bottom normal for an 18 year old boat. Two 150 HP engines are relatively new and are completely serviceable. Electronics and safety equipment are installed or available. Re-commissioning will render boat operational and seaworthy at no cost.

Former Navy 24 foot diesel powered aluminum patrol boat

5. PBU 24-1. Hull is sound with no evidence of crevice corrosion. The single diesel engine is unserviceable and requires replacement. Electronics and safety equipment are available. There is no trailer for this boat. Replacement of engine, installation of electronics, procurement of trailer, and re-commissioning will render boat operational and seaworthy (operation of this vessel is not included in the budget; re-commissioning will cost approximately \$30,000).

BUDGET

The NJNMJC received budget appropriations in FY 2001 and FY 2002 totaling \$160,000. The bulk of these funds went to purchase equipment for the boats acquired by the command. Subsequently, all other expenditures came out of the State Active Duty accounts as reflected below. The vast majority of this money was spent on Operation Noble Eagle. There have been no funds available since the start of FY 2003. The NJNMJC has been using the Plainfield Armory for training. Use of the armory has been treated as in kind costs by DMAVA.

New Jersey Naval Militia's State Active Duty Expenditures

Event Code	Description	Mondays	Amount	DATES
00A	State Guard	2	\$ 235.58	2-3 Jun 00
00H	Y2 Call up	4	\$ 696.72	31 Dec 99-1 Jan 00
00M	McGuire Air Show	28	\$ 3,492.40	1-3 Jun 00
01A	OPSAIL 2000	495	\$ 75,827.64	19 Jun - 14 Jul 00
01E	Naval Militia School	1	\$ 98.76	3-Jun-01
01F	Lakehurst Air show	12	\$ 1,431.84	30 May -3 Jun 01
01G	Memorial Day	12	\$ 1,018.61	26-28 May 01
01H	Various	21	\$ 4,102.41	11-17 Jun 01
01K	Unspecified	4	\$ 535.62	14-Sep-00
01K	Burial Detail	6	\$ 801.48	26 Feb - 26 Jun 01
01M	Joint Defender	3	\$ 379.82	3-4 Nov 00
01U	Snowstorm	3	\$ 683.49	4-6 Mar 01
01V	Chaplain Support	1	\$ 161.17	7-Apr-01
02A	BG Doyle support	6	\$ 1,081.29	27 Apr- 13 Dec 01
02C	Unspecified	15	\$ 2,273.02	7 Jul - 10 Sep 01
02C	Noble Eagle	1266	\$ 204,464.59	11Sep - 31Dec 01
02C	Noble Eagle	4451	\$ 726,960.05	1 Jan - 2 Jul 02
02D	Unspecified	1	\$ 161.17	21-Sep-01
02G	Noble Eagle	1490	\$ 244,573.78	11 Sep - 28 Dec 01
02E	Unspecified	18	\$ 3,259.21	21 Jul - 8 Dec 01
02J	Unspecified	24	\$ 1,824.96	15 Mar - 7 Apr 02
02G	Unspecified	144	\$ 19,941.01	26 Dec 01- 2 Jul 02
02O	JOC Spt	42	\$ 7,670.28	16 Feb - 29 Mar 02
03C	Unspecified	95	\$ 10,049.36	29 Jul - 5 Oct 02
	Naval Milita Total for 2000	536	\$ 81,167.78	
	Naval Milita Total for 2001	2852	\$ 464,110.82	
	Naval Milita Total for 2002	4756	\$ 766,445.66	
	TOTAL	8144	\$ 1,311,724.26	

Potential funding requirements have been projected for the next three years. The first year includes a chart for operations with existing equipment and alternatively, with badly needed new engines. Each year also includes estimated personnel complement.

Planning Assumptions

1. Year 1A budget reflects the cost to put three boats in the water with existing engines.
2. Year 1B budget includes new engines for PBU-1 and PBU-2.
3. Year 2 and 3 budgets are predicated on new engines in PBU-1 and PBU-2.
4. Training costs reflect \$60 per State Guard member per year. (Naval Militia personnel are trained in their Reserve Units.)
5. Vehicle acquisition includes purchase of one SUV in years 1 and 2, and one V5 passenger van in year 3; O & M is at state specified rates.
6. Mandays are variable based State Active Duty with pay and liability costs funded outside of DMAVA accounts costs of State Active Duty are not included.
7. Cost for full-time employees does not include fringe benefits of approximately 30 percent that is funded centrally by the State.
8. Year 3 addition of PBUs 5 and 6 assumes continued no cost acquisition and serviceable engines.
9. Recruiting will be done on a voluntary basis.

Projected Costs for NJ Naval Militia Joint Command Year 1A (with existing equipment)

<u>Activity</u>	<u>Cost</u>	<u>Remarks</u>
Organizational structure	\$0.00	General support in volunteer status
Operations & Maintenance	\$65,000.00	200 hours annually for training (PBU 23-1 & 2 @ \$125/hr, PBU 23-4 @ \$75/hr)
Equipment	\$0.00	
Training requirements	\$0.00	Materials
State man-day payroll	\$0.00	Contingency funds only (State Active Duty)
Recruiting	\$200.00	Materials
College tuition and other state funded benefits	\$0.00	N/A
Operating expenses	\$10,000.00	Miscellaneous and office supplies
Start up costs	\$6,500.00	Recommission boats
Administrative costs (1 person half-time)	\$10,400.00	\$10/hr
TOTAL	\$92,100.00	

Manning Level

HQ	70 (includes Initial Entry Training cadre and Master-At-Arms force)
Naval Militia	200
State Guard	205
Total	475

Projected Costs for NJ Naval Militia Joint Command		
Year 1B (replace high-time engines)		
<u>Activity</u>	<u>Cost</u>	<u>Remarks</u>
Organizational structure	\$0.00	General support in volunteer status
Operations & Maintenance	\$45,000.00	200 hours annually for training (3 boats @ \$75/hour)
Equipment	\$70,000.00	4 new engines (two each for PBU 23-1 & 2)
Training requirements	\$16,500.00	Materials
State man-day payroll	\$0.00	Contingency funds only (State Active Duty)
Recruiting	\$500.00	Materials
College tuition and other state funded benefits	\$0.00	N/A
Operating expenses	\$10,000.00	Miscellaneous and office supplies
Start up costs	\$6,500.00	Recommission boats
Administrative costs (1 person half-time)	\$10,400.00	\$10/hr
Vehicle acquisition	\$20,000.00	
Vehicle operation	\$1,900.00	State flat rate
TOTAL	\$180,800.00	
<u>Manning Level</u>		
HQ	70	(includes Initial Entry Training cadre and Master-At-Arms force)
Naval Militia	200	
State Guard	205	
Total	475	

Projected Costs for NJ Naval Militia Joint Command			
Year 2			
<u>Activity</u>		<u>Cost</u>	<u>Remarks</u>
Organizational structure		\$0.00	General support in volunteer status
Operations & Maintenance		\$90,000.00	300 hours annually for training (4 boats @ \$75/hour)
Equipment		\$50,000.00	Outfit PBU 23-3 (includes new engines)
Training requirements		\$19,800.00	Materials
State man-day payroll		\$0.00	Contingency funds only (State Active Duty)
Recruiting		\$1,000.00	Materials
College tuition and other state funded benefits		\$0.00	N/A
Operating expenses		\$15,000.00	Miscellaneous and office supplies
Start up costs		\$0.00	N/A
Administrative costs (1 person full-time)		\$35,000.00	Administrator
Vehicle acquisition		\$20,000.00	
Vehicle operation		\$3,800.00	State flat rate
	TOTAL	\$234,600.00	
<u>Manning Level</u>			
HQ	70	(includes Initial Entry Training cadre and Master-At-Arms force)	
Naval Militia	500		
State Guard	260		
Total	830		

Projected Costs for NJ Naval Militia Joint Command Year 3

<u>Activity</u>	<u>Cost</u>	<u>Remarks</u>
Organizational structure	\$0.00	General support in volunteer status
Operations & Maintenance	\$135,000.00	300 hours annually for training (6 boats @\$75/hr)
Equipment	\$20,000.00	Outfit fifth and sixth boat
Training requirements	\$24,300.00	Materials
State man-day payroll	\$0.00	Contingency funds only (State Active Duty)
Recruiting	\$1,000.00	Materials
College tuition and other state funded benefits	\$0.00	N/A
Operating expenses	\$20,000.00	Miscellaneous and office supplies
Start up costs	\$0.00	N/A
Administrative costs (2 persons full-time)	\$65,000.00	Administrator and secretary
Vehicle acquisition	\$20,000.00	
Vehicle operation	\$6,100.00	State flat rate
TOTAL	\$291,400.00	

Manning Level

HQ	70 (includes Initial Entry Training cadre and Master-At-Arms force)
Naval Militia	800
State Guard	335
Total	1205

Appendix A

U.S. Department of
Homeland Security

United States
Coast Guard



Commander
United States Coast Guard
Activities New York

212 Coast Guard Drive
Staten Island, NY 10305
Staff Symbol: CS
Phone: (718) 354-4003
Fax: (718) 354-4009

1600
7 June 2004

Dr. Wayne Girardet
Director, Government Relations
Dept. of Military & Veterans Affairs
P.O. Box 340
Trenton, N. J. 08625-0340

Dear Dr. Girardet,

I am heartened to see that the State of New Jersey is taking a serious look at ways to enhance its security along its diverse coastline and that the New Jersey Naval Militia (NJNM) may be part of that discussion. I welcome the opportunity to comment on the prospective mission mix for the NJNM. After the terrorist attacks of September 11th, 2001, the NJNM deployed boats and crews to the Raritan Bay in the vicinity of Naval Weapons Station Earle. These assets helped provide maritime domain awareness within the port and significantly contributed to the security of NWS Earle. This is just one of many important missions that could be carried out by a capable State militia.

As you may know, the New York Naval Militia (NYNM) has had its vessel PRIVATEER, its boat crews, and armed NY National Guard members aboard, deployed for the past 32 months at the Indian Point Nuclear Power Plant on the Hudson River. This resource has become an essential part of the maritime security force protecting the region's critical infrastructure. My staff is currently working with the State of New York to further integrate the NYNM's training, tactics and newly procured small boats into the joint maritime forces deployed both for planned security events such as Fleet Week and the Republican National Convention (RNC) as well as unplanned intelligence driven security events such as occurred over the year-end holiday season. These joint forces include vessels from federal, state and local law enforcement and security agencies such as the US Coast Guard, NYPD Harbor Unit, NJ State Police Marine Unit, NYS Department of Environmental Conservation, the U. S. Park Police, and others. The robust collaboration and continuous coordination between these agencies has resulted in enhanced maritime domain awareness and a tighter security net over the port. I firmly

believe that full integration of the NYNM's current capability, as well as the prospective capability of the NJNM, would only improve that posture resulting in better security for each state and the region as a whole.

Our goal should be that of full collaboration toward achieving a seamless security net comprised of federal, state and local security agencies. I believe the extent of collaboration between local Coast Guard forces and the New Jersey State Police Marine Unit has never been better. To that end, my staff has also been working with the NJ Domestic Security Preparedness Task Force on a Memorandum of Agreement for the cooperative enforcement of federal security zones. Each step like this that we take certainly moves us closer to achieving our goal. I envision that a robust, trained and capable NJNM force is yet another large step in that direction. In addition to the visible deterrent that law enforcement vessels project, below are some of the potential missions in which a NJNM role would be beneficial:

- Security Zone Enforcement – a potential enhancement under the prospective MOA to include the use of NJNM assets in support of safety/security zone enforcement.
- Maritime Domain Awareness Patrols – provide intel/information regarding boats or people in and about NJ waters and facilities that can be utilized to raise the MDA of the joint federal, state and local forces operating in the maritime environment.
- Anti-Terrorism Force Protection – provide on water presence/patrols for ships conducting loading operations at NWS EARLE.
- Critical Infrastructure Protection – presence/protection of state or federally designated critical infrastructure similar to the operation of the NYNM at Indian Point Nuclear Power Plant.
- Vessel Escorts – escorts of commuter ferries (as soft targets) during elevated maritime security conditions (MARSEC II) and/or cruise ships calling on the new Bayonne Passenger Ship Terminal at MOTBY.
- Maritime Transportation Security Act (MTSA) compliance – many of the over 200 MTSA regulated waterfront facilities within the Captain of the Port (COTP) New York zone requiring an approved facility security plan are located along NJ waters. Once the initial facility security plan approval process is completed at the end of the month, there will be numerous follow-up and random inspections in the months and years to come. NJNM members could receive facility inspector training and assist with visits to regulated facilities, as well as non-regulated facilities such as marinas, public access facilities and work yards.
- Force Multiplier – once trained, NJNM assets and personnel could be utilized in surge operations such as the RNC for waterside tasking as part of the operational force letdown or to work in concert with the NJ Domestic Security Preparedness Task Force, NJSP Marine Units or local Coast Guard units. Similar to joint USN/USCG operations, we are presently developing plans with the NYNM to place USCG personnel onboard NYNM boats to extend law enforcement authority to these boats during the RNC.

Should the State of New Jersey decide to re-emphasize the NJNM, Coast Guard Activities New York would seek every opportunity for the NJNM personnel to operate in a joint environment and cross-train with Coast Guard personnel. I hope this information is helpful to the committee looking at the viability of the NJNM. Please feel free to contact me should you need additional information.

Sincerely,

C. E. BONE
Captain, U. S. Coast Guard
Commander, Coast Guard Activities New York

Copy: MG George T. Garrett, NJ Chief Homeland Security
Al Bunting, EA to New Jersey Adjutant General
Captain J. Sarubbi, COTP Philadelphia

Appendix B



New York Naval Militia

Serving the Nation and the State of New York Since 1776

<http://www.dmna.state.ny.us/nynm/nynavmil.html>

1



RADM Robert A. Rosen
NYNM
Commander
New York Naval Militia



The New York State Naval Militia A Proud Tradition

- The New York State Naval Militia dates from the American Revolution when Naval Militia Sailors and Marines fought in the earliest naval battles on Lake Champlain and elsewhere.
- In its present legal existence, the NYS Naval Militia dates from the naval expansion of the 1880's, It was authorized by the Governor in 1889 and formally activated in 1891.
- NYS Naval Militia members have been activated for many of our nations conflicts including the Spanish American War, World Wars I and II, Korea, Vietnam, Desert Shield/Desert Storm, Bosnia and anti-terrorism in Afghanistan.
- The NYS Naval Militia is the only active, federally-recognized Naval Militia with continuous unbroken service to the Country and State.

2



What is the NYS Naval Militia?

- **The NYS Naval Militia is a force which has a dual Federal/State jurisdictional identity, and which may alternately execute Federal/State functions. This dual identity is implemented through Memoranda of Understanding with the US Navy, US Marine Corps and US Coast Guard.**

Primarily governed by Title 10 USC and NYS Military Law

- **It is the Naval Component of the organized militia of the United States, an element of the Department of the Navy.**

Title 10 USC 311; 10 USC 7851-7854

- **It is also a component of the organized militia of the State of New York.**

NYS Military Law, Article II, Sec.43; 10 USC 7851; NYS Military Law Article I, Sec. 6.

1



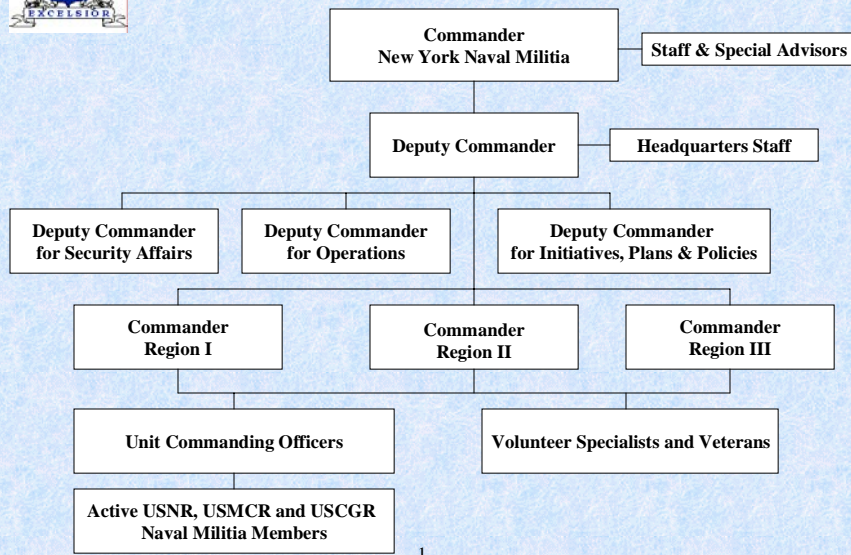
Who runs the NYS Naval Militia?

- **The New York State Naval Militia is a military component of the New York State Division of Military and Naval Affairs.**
- **Governor George E. Pataki is the Commander in Chief of New York State's military forces.**
- **The Chief Executive/Commanding Officer of the NYS Division of Military and Naval Affairs is The Adjutant General of NYS, Major General Thomas P. Maguire, Jr., NYANG.**
- **The Commander of the NYS Naval Militia is Rear Admiral Robert A. Rosen, NYNM. He is also the Naval Aide to the Governor.**
- **With the assistance of many volunteers, two full-time NYS Division of Military and Naval Affairs employees administer the program.**

4



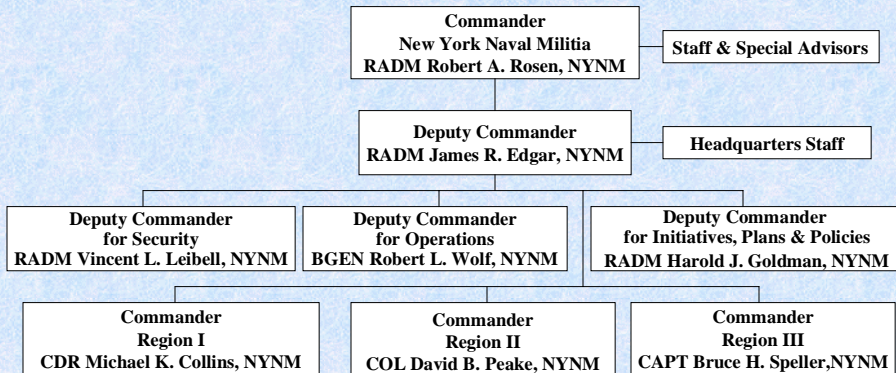
How is the Naval Militia Organized?



1



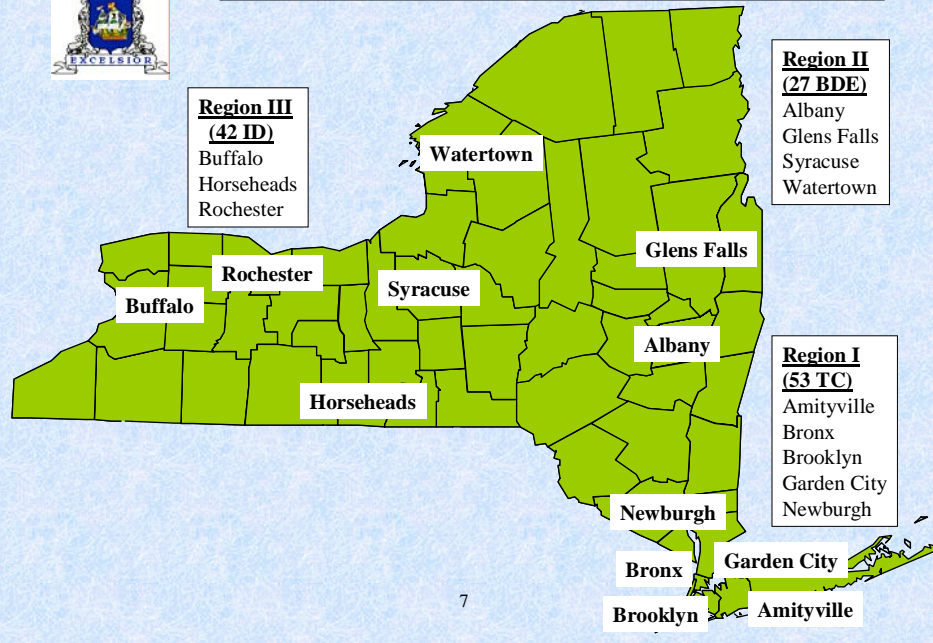
Who are the Leaders of the NYS Naval Militia?



6



What are the New York Naval Militia Regions?



Who are the Members of the NYS Naval Militia?

- The NYS Naval Militia complements the Army and Air National Guard programs, as well as the State Guard program, within New York State.
- The Naval Militia is composed primarily of Navy, Marine Corps and Coast Guard Active Reservists who live or drill in New York State. Under US Code Title 10, it draws 95% of its personnel from Navy and Marine Corps Reservists who have volunteered to be members of the NY Naval Militia, have signed enlistment documents and have taken oaths of office.
- 5% of the Naval Militia can be Coast Guard Reservists, or prior service/retired Sailors and Marines who live in New York State and/or drill with the Naval Militia in New York State.



What does the NYS Naval Militia Do?

The New York State Naval Militia is a voluntary organized military force that:

- Responds to emergencies such as:
 - * Natural or Manmade Disasters
 - * Technological Disasters
 - * Civil Emergencies
 - * Major Accidents and Rescues
 - * Homeland Defense
- Carries out community service missions such as construction projects and addresses other appropriate needs of the State as requested by the Governor.
- Promotes the stature of the Naval Service in New York State.
- Trains, plans and prepares.



What are Some of the Naval Militia's Responses to Emergencies?

1996: 1,406 person days of service related to the NYC blizzard, Southern Tier floods, Long Island fires and Long Island TWA Flight 800 recovery effort.

1998: 629 person days of service related to the Northern NY ice storm, Saratoga/Rensselaer tornado, Central NY wind storms and Central American Hurricane Mitch.

1999: 134 person days of activity related to Buffalo/Rochester snow storms, West point fires, and Woodstock II in Rome, NY.

1999/2000: 206 person days of service related to Y2K planning, preparedness and emergency backup.

2001: 10,000+ person days of service related to the World Trade Center attacks on 9/11/01.



What are Some of the Naval Militia's Community Service Accomplishments?

- **Constructed a Fire Training Center for Columbia County's emergency services.**
- **Helped Boy Scouts build a nature trail in Rensselaer County**
- **Erected a bridge to connect two museums in Washington County.**
- **Helped dismantle and remove a building in Schenectady County.**
- **Provided instructors, food service and medical support for the New York Army National Guard ChalleNGe Program.**
- **Provides chaplain support for community functions.**
- **Supports the US Marine Corps annual Toys for Tots program.**

11



What is the Naval Militia doing to promote the Stature of the Naval Service?

- **Provides Naval representation for the Governor and The Adjutant General at official functions.**
- **Supports the Sea Cadet Program.**
- **Provides military funeral details.**
- **Judges high school drill team competitions, and supports scholarship programs.**
- **Supports the USS Intrepid museum, the USS Slater museum and the Buffalo Naval Serviceman's Park.**
- **Participates in Navy Recruiting District Advisory Council and the Naval Academy Appointments Board.**
- **Marches in Memorial Day parades and provides military honor guards.**



What is the Naval Militia doing to support Homeland Defense?

- **Conducted security operations at train stations, intermodal transportation centers, bridges and tunnels.**
- **Provided security at New York State military installations.**
- **Crews small boats providing security at a nuclear power plant on a major river.**
- **Supports Homeland Defense operations in coordination with other NYS Military Forces, often under command and control of Army or Air Guard officers.**

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What has the Naval Militia done in response to the World Trade Center Attacks?

- **Started calling-up and activating Naval Militia members within minutes of the attacks on the World Trade Center.**
- **Provided qualified personnel to staff Naval Militia desks in the NYS Division of Military & Naval Affairs Joint Operations Center (JOC), the State Emergency Management Office (SEMO) Emergency Operations Center, and the Naval Militia Headquarters.**
- **Served on the Command Staff of Joint Task Force 42, the forward-deployed task force leading New York State's military response in New York City.**
- **Served as an integral part of JTF 42, including leading some of the task force's missions.**



What has the Naval Militia done in response to the World Trade Center Attacks (continued)?

- Conducted security missions in New York City at Ground Zero, Battery Park, JTF 42 Headquarters, train stations, intermodal transportation facilities, tunnels, bridges, the Pier 36 warehouse, and Piers 92 and 94.
- Constructed a “tent city” in Battery Park in support of security operations.
- With the NYS Air National Guard, renovated housing facilities on Governor’s Island. Renovated and operated messing facilities on Governor’s Island.
- Established and operated a warehouse with skilled warehouse management personnel.
- Assisted NYC in organizing relief efforts by providing support and staffing a liaison desk at the NYC Emergency Operations Center.



What has the Naval Militia done in response to the World Trade Center Attacks (continued)?

- Provided qualified doctors, nurses, physician assistants and corpsmen to minister to the medical needs of NYS Military Forces.
- Provided chaplains to minister to the spiritual and stress management needs of NYS Military Forces.
- Provided JAG services to NYS Military Forces.
- Supported the NY Army National Guard by crewing a buoy tender providing Hudson River security to the Indian Point Nuclear Power Plant.
- Provided qualified personnel to supplement full-time Division of Military & Naval Affairs contracts, purchasing and payroll personnel.
- Coordinated with civilian and military leaders of the Navy, Marine Corps, Coast Guard and law enforcement agencies.
- Cross-trained with other federal and State military personnel.



Why do Reservists join the NYS Naval Militia?

- **The NYS Naval Militia provides an additional dimension to patriotic military service, military training opportunities and community service.**
- **Militia members are eligible for NYS Military Forces benefits that include tuition scholarship programs; free highway, bridge and tunnel toll passes to/from drills and Annual Training; Naval Militia license plates; and New York State awards and commendations.**
- **Militia members are eligible to be called to State active duty in a pay status.**
- **Participation in the Naval Militia provides a possible item for inclusion USNR/USMCR/USCGR FITREPS/EVALS.**

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Why do Reservists join the NYS Naval Militia (continued)?

- **Participation in the Naval Militia provides an opportunity for federal and State awards and commendations.**
- **Militia members may participate in NYS Division of Military and Naval Affairs training.**
- **Participation in the Naval Militia provides opportunities to stay current with State and federal military thinking and activities through symposia, newsletters, and military organizations.**
- **Opportunities exist to participate in Naval Militia or Joint Forces activities, ceremonies and social events.**

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How do Reservists benefit from participating in the Naval Militia?

- **More than 4,000 Reservists are currently members of the NY Naval Militia.**
- **Each Reserve Unit has a member appointed to serve as a Naval Militia points of contact (POC).**
- **473 Naval Militia members have served more than 10,340 days on State Active Duty during 2001.**
- **4,975 Free Thruway and bridge/tunnel passes have been issued to Naval Militia members during the past year saving them an estimated \$8,000.**

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How do Reservists benefit from participating in the Naval Militia (continued)?

- **315 Naval Militia Reservists have received tuition support benefits during the past year. Since the beginning of the Military Scholarship Program in 1996, some 475 Naval Militia members have received more than 1,150 semesters of tuition support benefits valued at more than \$1,100,000.**
- **1,142 state awards or commendations have been presented to Naval Militia members during the past year.**

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How does a Reservist join the NYS Naval Militia?

- A Reservist requests to join the Naval Militia by submitting a voluntary enlistment or nomination for appointment request form to his or her unit point of contact (POC).
- Reserve units have a member who serves as a Naval Militia POC appointed by the unit Commanding Officer. This member will forward the form to Naval Militia Headquarters for approval.
- Once the request to join the Naval Militia is approved, the qualified and approved Reservist takes an oath to support the Laws of New York State, and signs the required documents.

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What are the Requirements for Retention in the Naval Militia?

- Drilling Reservists must be members in good standing of their Reserve units, by meeting all federal participation requirements and standards.
- Members must provide information to their Naval Militia points of contact to facilitate call-up of personnel in emergencies, and to provide information about their skills and qualifications.
- All members must earn at least 5 Naval Militia participation points each federal fiscal year by participating in militia meetings/training, approved community activities, color guards, State Active Duty or other approved activities.

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Why do the USNR, USMCR and USCGR Support the Naval Militia?

- **If a Naval Militia member is needed for a federal reserve call up, the member is immediately released from any NYS obligation.**
- **Naval Militia benefits can improve recruiting and retention by giving Reservists incentives to join and stay in the Reserves.**
- **Militia members who have participated in Joint Training opportunities have obtained general military training, rate-related qualifications, and operational experience in a joint environment.**
- **Militia members who have been called to State Active Duty have enhanced their rate/specialty skills.**
- **The USNR, USMCR and USCGR have signed Memoranda of Understanding which provide for mutual recognition and support.**

23



RICHARD J. CODEY
Acting Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 112
TRENTON, NJ 08625-0112

PETER C. HARVEY
Attorney General

December 17, 2004

Glenn K. Rieth, Major General
The Adjutant General
New Jersey Department of
Military and Veterans Affairs
P.O. Box 340
Trenton, New Jersey 08540

Re: Proposed Report to the New Jersey Legislature
Concerning the New Jersey Naval Militia Joint
Command (NJNMJC) Pursuant to P.L. 2003, c. 300.

Dear General Rieth:

I have reviewed the proposed report to the New Jersey Legislature concerning the New Jersey Naval Militia Joint Command (NJNMJC) pursuant to P.L. 2003, c. 300. ("the Report") that you sent to me under cover of your December 3, 2004 letter.

Upon review of the Report, I find that it complies with the legal requirements of P.L. 2003, c. 300. Further, the summary of the legal advice issued to you by Peter C. Harvey, by Melissa H. Raksa, Deputy Attorney General on July 21, 2004, that is contained in the "Legal" section of the Report is accurate. I agree with and would like to further emphasize the portion of the Legal section of the Report that states that because:

the Naval Militia and the State Guard are considered components of the "organized militia of New Jersey," N.J.S.A. 38A:1-1(a) and 38:1-3(a), the New Jersey statutes that pertain to the "militia" and "organized militia" (e.g. N.J.S.A. 38A, Chapter 4, Personnel of the Organized Militia - General Provisions; Chapter 5, Officers; Chapter 6,



December 17, 2004

Page 2

Enlisted Members), would apply to the Naval Militia and the State Guard.

Finally, the proposed missions listed in the "Missions/Operation" section of the Report are generally consistent with the specific powers of the Governor and the Adjutant General to call the militia into active duty. See N.J.S.A. 38A:2-4 (The Governor may in case of insurrection, invasion, tumult, riot, breach of the peace, natural disaster, or imminent danger to the public safety, order to active duty all or any part of the militia that he may deem necessary. He maintain such forces on such active duty until the exigencies have passed.); and the Adjutant General's powers to command the organized militia, See N.J.S.A. 38A:3-6(d). It should be noted however, that the NJNMJC, the Naval Militia and the State Guard (no matter how they are organized), may not be called to active or inactive duty to provide aid to localities in circumstances which may threaten or are a danger to the public health safety and welfare. See N.J.S.A. 38A:3-6.1. The Adjutant General's authority to activate troops for that purpose is limited by the terms of the statute to the National Guard only. Id. As such, to the extent the need to activate Naval Militia and State Guard troops for specific missions arises, the mission should fall under one of the types listed in N.J.S.A. 38A:2-4.

If you require anything further in regard of this matter, please contact me at (609) 633-8197.

Sincerely yours,

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

By: _____



Beth Leigh Mitchell
Deputy Attorney General

BLM

c: Col. Daniel Giaquinto, JAG. NJNG



**NEW JERSEY STATE POLICE
MARINE SERVICES BUREAU**



NEW JERSEY STATE POLICE

TO	: Colonel R. Fuentes, Superintendent LTC L. Hennon-Bell Deputy Superintendent of Homeland Security Major D. Lieb, C/O, Special Operations Section Capt. K. Mallette, E/O, Special Operations Section	DATE:	3-28-05
FROM	: Lt. M. Scarpone, A/Bureau Chief, Marine Services	MEMO#	
SUBJECT	: NEW JERSEY NAVAL MILITIA		
BFO Trac #:		LTC Trac #	
		Troop Trac #	

Forward to Appropriate Personnel for Action:

- Response to your memorandum
- Review the attached correspondence and comply with directives
- For review and further action
- Acknowledge receipt and return memo w/ endorsement
- For Your Information / No Response Required
- Reply Required Due on _____
- Other - _____

COMMENTS:

In April, 2002, the New Jersey Adjutant General ordered the N.J. Naval Militia Joint Command (NJNMJC) to stand down because of structural problems within the organization and a lack of regulations. Since April 2002, the NJNMJC continues to stand down but members have been participating in some training as volunteers. In June 2004, the New Jersey Legislature required the Adjutant General (TAG) to prepare a report to determine whether a viable mission existed for the NJNMJC. The TAG formed a subcommittee which recommended that the NJNMJC be reinstated and utilized as a force multiplier in the State's port security mission. The DMAVA reported was forwarded to the Division of State Police, through the Domestic Security Preparedness Task Force, for review and comment.

As you know, the Division's Marine Services Bureau has a long and distinguished history as the lead state agency for the port security mission in New Jersey and is tasked, with its local, state and federal partners, with protection of New Jersey's maritime environment. The Marine Services Bureau's mission includes enforcement of state criminal laws, as well as recreational boating

laws, along the waterways of New Jersey. The reach of the Marine Services Bureau's jurisdiction extends from New York Harbor in the north to the Delaware River and Bay in the south. It also includes the New Jersey waterways in and around the New Jersey coast.

The success of the Marine Services Bureau relies, in part, on the continuation of the long standing relationship with our local, state and federal partners and the seamless interaction between those entities. Recently, the law enforcement authority of the Bureau was expanded with the signing of the MOU with the US Coast Guard, allowing the Bureau to enforce federal law in Coast Guard established waterside security zones. This MOU allows the Bureau to more effectively and efficiently perform its port security mission by allowing the Bureau to now stop, detain and arrest violators of those waterside security zones.

The possibility of utilizing the New Jersey Naval Militia to augment the Marine Services Bureau has been explored. After careful scrutiny, the "standup" of the NJNMJC presents fundamental barriers regarding law enforcement authority, command and control (C2) and funding issues which preclude the NJNMJC from acting as a viable force multiplier to the New Jersey State Police in their port security mission. Recognizing a need for additional resources to improve the State's port security posture, the question becomes "what is the most efficient and effective way to fill that resource gap". The NJNMJC cannot fill that gap for the following reasons:

1. The NJNMJC does not possess (nor does any state Naval Militia) any law enforcement authority and are not permitted to carry weapons;
2. The NJNMJC does not, and would not, fall within the command and control (C2) structure of the Marine Services Bureau or the Division of State Police; and
3. The possible diversion of limited funding for port security from the State Police to support the NJNMJC would adversely impact on the Marine Services Bureau ability to perform its mission.

With limited funding available for port security, the use of funds to "standup" an organization which does not possess law enforcement authority, when those funds could be more effectively used to increase the ability of the Marine Services Bureau to conduct law enforcement operations, would be a diversion of funds from a more appropriate use. Any funding would be much better used to "plus up" and train additional law enforcement assets for the State Police. The use of an organization without law enforcement authority would also dilute the State's maritime law enforcement posture by requiring constant State Police presence at or near the areas being patrolled by the NJNMJC. Moreover, while the State Police operate under a well established command and control (C2) structure, the NJNMJC would not, and could not, operate under that same structure thereby creating a dual and potentially distractive C2 posture in the marine environment. Each of these issues create a fundamental barrier to the use of the NJNMJC as a force multiplier to the Marine Services Bureau and would only serve to dilute the efficiencies to be derived from any available additional resources and divert and diminish from the Marine Services Bureau's port security mission.

For your information.

**MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES COAST
GUARD AND THE STATE OF NEW JERSEY REGARDING THE
ENFORCEMENT OF MARITIME SAFETY AND SECURITY ZONES**

I. **PARTIES:** The parties to this Agreement are the United States Coast Guard (USCG) and the State of New Jersey, through the New Jersey Department of Law & Public Safety, Office of the Attorney General, Division of State Police (NJSP).

II. **AUTHORITY:** This Agreement is authorized under the provisions of:

14 U.S.C. § 141(b) (2003),
50 U.S.C. § 191 (2003),
33 U.S.C. § 1221, *et seq.* (2003),
46 U.S.C. § 70119 (2004),
33 C.F.R. Part 6 (2003),
Department of Homeland Security Delegation No. 170.1, and
N.J.S.A. 53:I-1 *et seq.*, (as amended)(2004).

III. **PURPOSE:** The purpose of this Agreement is to set forth the framework and procedures by which the United States Coast Guard (USCG), through, among others, the Captain of the Port (COTP) New York/New Jersey and the New Jersey State Police (NJSP) will work together to enhance the safety and security of waters in the COTP New York/New Jersey Area of Responsibility (AOR) through the cooperative enforcement of maritime safety and security zones that are created by the Coast Guard under the authority of the Magnuson Act, as codified at 50 U.S.C. § 191, and implemented at 33 C.F.R. Part 6, and the Ports and Waterways Safety Act, as codified at 33 U.S.C. § 1221, *et seq.*

IV. **DEFINITIONS:** The parties understand that there is a spectrum of activities that promote the effective enforcement of security and safety zones. Throughout this agreement, an effort has been made to distinguish between the terms "ENFORCEMENT ACTION" and "ENFORCEMENT ASSISTANCE," as described below.

A. **Enforcement Action.** For the purposes of this agreement, "ENFORCEMENT ACTION" is any law enforcement activity that implicates any legal privilege or constitutional right of a person, including, but not limited to: arrest, seizure, interrogation, or application of force.

B. **Enforcement Assistance.** For the purposes of this agreement, "ENFORCEMENT ASSISTANCE" is any law enforcement activity that does not amount to enforcement action, but which is helpful to the Coast Guard in furthering the purposes of an established safety or security zone. When authorized by COTP New York/New Jersey, this agreement, or relevant OPORDER, NJSP officers may be present within a designated safety or security zone created by the Coast Guard. While present, such officers are authorized to monitor activities within such zone, detect and report potential violations of federal law to the Coast Guard and reasonably detain individuals, when necessary. While patrolling, NJSP officers are authorized to approach, intercept and hail other vessels within the zone, so long as such activities are lawful under State law.

V. LEGAL AUTHORITIES:

A. U. S. Coast Guard. COTP New York/New Jersey, the First District Commander, and the Atlantic Area Commander are authorized to create and enforce limited access zones for the security and protection of maritime assets, both afloat and ashore, within the COTP New York/New Jersey Zone.

1. A safety zone, according to 33 C.F.R. § 165.20, is "a water area, shore area, or water and shore area to which, for safety or environmental purposes, access is limited to authorized persons, vehicles, or vessels. It may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion." The Coast Guard's authority to issue a regulation creating a safety zone arises under Title I of The Ports and Waterways Safety Act (PWSA). See, 33 U.S.C. § 1231. These zones are established when necessary for the protection of any vessel, structure, waters, or shore area from a safety or environmental hazard.

2. A security zone, according to 33 C.F.R. § 6.01-5, is "all areas of land, water, or land and water, which are so designated by the Captain of the Port for such time as he deems necessary to prevent damage or injury to any vessel or waterfront facility, to safeguard ports, harbors, territories, or waters of the United States or to secure the observance of the rights and obligations of the United States." The Coast Guard's authority to issue a regulation creating a security zone arises under the Magnuson Act and also arises under Title I of The Ports and Waterways Safety Act (PWSA). See 50 U.S.C. 191 and 33 U.S.C. § 1231 respectively. Security zones are used for national security interests rather than strictly for safety considerations.

3. The parties agree that the existence of a safety or security zone does not in any way foreclose other legitimate, state law enforcement activities or actions within or in the vicinity of such safety or security zone.

4. On August 9, 2004, the President signed into law the "Coast Guard Maritime Transportation Security Act of 2004," which, among other things, empowers any state or local government law enforcement officer who has authority to enforce State criminal laws to make an arrest for violation of a Magnuson Act security zone or PWSA safety or security zone (or section 10(d) of the Deepwater Port Act of 1974 (33 U.S.C. 1509(d))) if such violation is a felony; and the officer has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.

5. Other Coast Guard Powers Not Delegated. This agreement does not constitute a delegation of Coast Guard authorities to take any law enforcement action pursuant to 14 U.S.C. 89(a) or to direct the movement of vessels under the authority of the Captain of the Port pursuant to federal law or regulation.

A. New Jersey State Police (NJSP)

1. The NJSP possess general law enforcement authority throughout the State of New Jersey, including, but not limited to, the authority to "stop and board a vessel in the waters of the State to determine whether the vessel complies with State and federal boating safety laws and shall have the power to order a vessel that does not comply with these laws to return immediately to shore." (N.J.S.A. 53:1-1 et. seq.)

2. On July 2, 2004, the Governor of New Jersey signed a bill, enacted by the State Legislature, which authorized the NJSP, when requested by the Coast Guard, "to take appropriate action as authorized by the United States Coast Guard to assist the United States Coast Guard in the enforcement of any safety and security zone established by the United States Coast Guard Captain of the Port for the Port of New York and New Jersey or the Port of Philadelphia." N.J.S.A. 53:1-11.14e, as amended. The parties intend that this Memorandum of Agreement establishes the protocols for those enforcement activities. (N.J.S.A. 53:1-11:14 as amended by P.L 2004, c.82 (2004))

VI. RESPONSIBILITIES:

A. USCG

1. COTP New York/New Jersey shall develop and promulgate a plan of operations (OPORDER) for the voluntary employment of NJSP personnel and assets to assist in the enforcement of Coast Guard safety and security zones before any NJSP unit may engage in any enforcement activities or operation under this agreement.

2. Mission planning, coordination and execution between the USCG and NJSP will be managed primarily by the COTP New York/New Jersey. NJSP personnel shall only be authorized to engage in ENFORCEMENT ASSISTANCE or ENFORCEMENT ACTION relative to a Coast Guard created safety or security zone to the extent its operations are pursuant to an approved OPORDER.

3. As determined by the USCG, NJSP and USCG units will maintain a communications schedule during all joint or cooperative enforcement operations. NJSP will ensure that NJSP officers and assets operating pursuant to this agreement possess communications equipment compatible with that of the local USCG units, and the COTP New York/New Jersey OPCEN.

4. COTP New York/New Jersey, or his or her designee, reserves the right to assume responsibility for any or all enforcement activities relating to any safety or security zone, at any time, when such action is deemed, in the opinion of COTP New York/New Jersey, most appropriate and in the public interest.

5. Operations permitting, the Coast Guard agrees to report any violations of state boating laws observed by its officers to the NJSP. To the extent permitted by law, the Coast Guard agrees to provide witness support for any ensuing prosecution or other action.

B. NJSP

1. When NJSP personnel are on patrol, but are not operating pursuant to a Coast Guard approved OPORDER, NJSP officers are not authorized to engage in enforcement activities without first obtaining permission from the COTP New York/New Jersey. In such a case, NJSP officers may, in their discretion, report all relevant facts and circumstances to the COTP New York/New Jersey OPCEN and request, as appropriate, USCG authorization to engage in ENFORCEMENT ACTION or ENFORCEMENT ASSISTANCE, as necessary and appropriate.

2. Under exigent circumstances, where in the experience of the NJSP officers immediate intervention is necessary to avoid a serious violation of a safety or security zone in which the NJSP officer has a reasonable belief that there is an imminent threat of death or serious physical injury to any person, NJSP officers may take necessary action and report their actions to the COTP New York/New Jersey OPCEN as soon thereafter as is practicable under the circumstances.

3. When it reasonably appears that violation of a safety or security zone is also accompanied by a state law violation, NJSP officers are not required to obtain advance permission from the Coast Guard, provided all enforcement action is taken pursuant to State law. However, in all cases in which NJSP officers possess evidence that a violation of federal law did, in fact, occur, such NJSP Officers are encouraged to share all relevant evidence with the Coast Guard.

4. When operating independently, the NJSP agrees to notify the COTP New York/New Jersey, or his or her designee, of any suspicious activity or safety or security zone violations as soon as practicable.

5. When, upon the Coast Guard's request, the NJSP arrests or detains an individual, or seizes an individual's assets in connection with a safety or security zone violation, the USCG agrees to receive such individuals and assets within a reasonable time, and further agrees to make necessary arrangements for disposition in connection with the case. When NJSP arrests or detains an individual, or seizes an individual's assets in connection with a state law violation, NJSP shall be responsible for any further actions or arrangements.

C. USE OF FORCE

1. Nothing in this agreement impairs the inherent right of self-defense by law enforcement personnel of either the USCG or the NJSP.

2. No intermediate Coast Guard Field Commander is authorized to delegate the use of warning shots or disabling fire to any NJSP officer, as such authority is hereby reserved to the First District Commander. Any request for such authority shall be directed to the First District Commander, via the Chief of Operations.
3. All USCG personnel shall, at all times, follow the USCG use of force policy as most recently specified through applicable Commandant instructions and manuals, and as may be further defined by District or higher authority.
4. In joint operations between the USCG and NJSP for the enforcement of safety or security zones where NJSP officers are onboard USCG platforms, USCG use of force policy shall apply at all times. USCG law enforcement personnel shall comply with the USCG use of force policy while deployed onboard NJSP platforms.
5. While NJSP officers are engaged in ENFORCEMENT ACTION relative to a safety or security zone, but are operating without the supervision of USCG personnel or independently from their own NJSP platforms, NJSP officers will follow their own use of force policies. To that end, the NJSP may require its officers to use a more restrictive use of force policy than that which is used by the USCG. The NJSP shall not utilize a less restrictive use of force policy than the policy employed by the USCG. Before each joint operation, USCG and NJSP personnel shall meet to clarify and agree upon the use of force policy under which each agency is operating. Except as described above, when using force for any reason other than ENFORCEMENT ACTION in support of a safety or security zone, the NJSP use of force policies shall apply.

D. POST ENFORCEMENT ACTION

1. NJSP officers exercising authority under this agreement shall submit written documentation of any action taken pursuant to this agreement to the COTP New York/New Jersey. Such documentation shall include, but shall not be limited to, case investigation reports, a copy of any written warning or documentation of violation, and any supporting exhibits, affidavits, photographs or other evidence gathered. Additionally, the NJSP shall immediately notify COTP New York/New Jersey, or his/her designee, of any ENFORCEMENT ACTION taken in connection with a safety or security zone violation and any ENFORCEMENT ASSISTANCE provided in connection with a safety or security zone. Before forwarding any written reports, the NJSP shall review all such reports for accuracy and completeness and shall determine the cause and circumstances surrounding each reportable incident. All reports will be submitted on a timely basis.
2. NJSP officers will be made available, upon request by the USCG or a representative from the Department of Justice, to appear as witnesses as needed. NJSP officers who appear in cases related to this Agreement

may request official travel orders to be reimbursed for travel expenses and per diem (at rates authorized under the Federal Travel Regulations), for travel incurred while providing direct services to the Federal Government as a witness, in accordance with applicable Federal law.

E. REIMBURSEMENT: The parties understand that the Coast Guard will not pay or reimburse the NJSP for any activities undertaken by the NJSP pursuant to this agreement, if any, unless such payment or reimbursement is approved in advance in accordance with applicable federal procurement regulations. Absent such prior approval, the NJSP shall bear its own costs incurred while providing ENFORCEMENT ASSISTANCE or ENFORCEMENT ACTION, including, but not limited to, costs related to fuel, vessel maintenance, personnel costs, or post-enforcement actions. Nothing herein, however, shall be construed as limiting the State's ability to seek or receive grants or other funding from the federal government.

VII. TRAINING: No operations may be undertaken pursuant to this agreement until NJSP officers have received training to the satisfaction of COTP New York/New Jersey. The USCG will provide and document such training to individual NJSP officers, as needed to support the purposes of this agreement. Such training shall include instruction on USCG use of force policy and the USCG use of force continuum, as well as the legal regime applicable to safety and security zone enforcement strategies. Similarly, the State of New Jersey may, at its option, provide instructors and facilities for the training of Coast Guard personnel.

VIII. CIVIL LIABILITY AND AGENCY:

A. No agency relationship is created. NJSP officers shall not be deemed federal officers, agents, or employees of the federal government, as defined and provided for in Title 5, *United States Code*, for any purposes. No employee of NJSP shall be deemed to be a federal employee for the purposes of any law or regulation administered by the office of personnel management, nor shall any such NJSP officer be entitled to any additional pay, allowance, or inducement from the federal government. Nothing in this provision creates any employment status or requires the United States to provide any employment or disability benefits to any State of New Jersey employee.

B. The NJSP understands that a USCG request for assistance does not confer any privileges or immunities to the NJSP or its officers under federal law. The NJSP is viewed as assisting the USCG pursuant to its own organic statutory authority as listed in paragraph 2 above and other, applicable state law. As such, state law shall govern any causes of action, immunities, or remedies based upon the actions of NJSP officers, unless, at the election of the United States, such action is removed to federal court upon proper motion. However, at its option, the United States may elect to seek representation for NJSP officers when necessary or when, in the judgment of the Coast Guard, such representation is in the best interests of the federal government. The U. S. Department of Justice is the final authority for making such determinations on behalf of the United States. During the pendency of the federal representation determination, the NJSP and its officers may be afforded representation by the

New Jersey Office of the Attorney General, at the discretion of the New Jersey Attorney General. Such representation by the New Jersey Office of the Attorney General shall not prejudice the federal government's determination as to whether federal representation is appropriate.

C. The Coast Guard does not agree to indemnify any NJSP officer or the State of New Jersey for any matter arising out of activities related to this agreement, as such a promise would violate federal law. See 31 U.S.C. § 1331.

D. NJSP vessels, when operating pursuant to this agreement and an approved OORDER, and when actually engaged in ENFORCEMENT ACTION or ENFORCEMENT ASSISTANCE activities pursuant thereto, are deemed public vessels of the United States pursuant to 14 U.S.C. § 827, and deemed vessels of the Coast Guard pursuant to 14 U.S.C. § 646 only.

IX. POINTS OF CONTACT:

A. For the USCG:

Commander, USCG Activities New York, NY
212 Coast Guard Drive
Staten Island, New York 10305
(718) 354-4001

B. For the State of New Jersey:

Colonel Joseph R. Fuentes
Superintendent
New Jersey Division of State Police
West Trenton, New Jersey 08625
(609) 882-2000

X. CONFLICT OF LAW: Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the USCG or the department in which the Coast Guard is operating, the State of New Jersey or the NJSP. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.

XI. EFFECTIVE DATE: The terms of this agreement will become effective on the date it is signed by all parties.

XII. MODIFICATION: This agreement may be modified upon the mutual written consent of the parties.

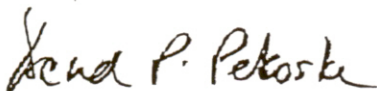
XIII. TERMINATION: The terms of this agreement will remain in effect for two years after the effective date. The parties will review the agreement every two years and may extend or alter the agreement in two-year increments by written mutual agreement. All alterations will be documented in a letter, signed by

cognizant representatives of both parties, and appended to each party's copy of the original agreement. The parties will determine at each review whether the alterations require the agreement to be rewritten. Either party may terminate this agreement upon thirty days written notice to the other party.

APPROVED BY:

UNITED STATES COAST GUARD

STATE OF NEW JERSEY



By: DAVID P. PEKOSKE
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District
U.S. Department of Homeland Security

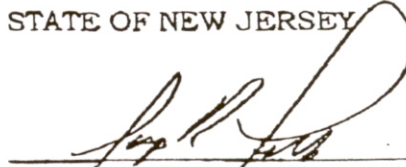
By: RICHARD J. CODEY
President of the Senate, Acting Governor

Date: DEC 16 2004

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STATE OF NEW JERSEY

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USCG –New Jersey MOA
Talking Points for
Rear Admiral Pekoske

Background.

- In late 2003, the New Jersey Attorney General's Office approached the Coast Guard about entering into an MOU to address joint security operations. D1, D5 and COTP NY and Philly personnel met with NJ officials to identify potential jurisdictional shortfalls to such an agreement. Based on these meetings, NJ introduced legislation that authorized the NJ State Police to take appropriate action, as authorized by the USCG, in the enforcement of any safety or security zone established in NY/NJ or Philadelphia. This bill became law in July 2004.
- In April 2004, First District and the state of Maine entered into the nation's first MOA authorizing state officers to assist in the enforcement of Ports and Waterways Safety Act (PWSA) and/or Magnuson Act safety or security zones. There were some limitations in this MOA, as the law was not clear whether state officials had the authority to fully enforce PWSA violations.
- In August, 2004 President Bush signed the Coast Guard Authorization Act of 2004, which included a provision authorizing state and local law enforcement officers with authority to enforce state criminal laws the authority to make arrests for violations of PWSA and/or Magnuson Act safety or security zones
- This MOA is designed to satisfy the requirements of the New Jersey law, and builds on the Maine MOU to include the additional state powers granted by the CG Auth Act. However, it is a flexible document, largely leaving the decision of how to use the state resources to the COTP. The MOA also requires that an OORDER be developed and approved prior to execution of any missions under the agreement.

Highlights.

- The MOA embodies a comprehensive strategy to facilitate synergy among federal and state safety and security related law enforcement activities in New Jersey waters.
- Consistent with mandate of the Homeland Security Act of 2002 (specifically, Sec. 102(c), codified at 6 U.S.C. § 112), this regime furthers Congress' purposes of promoting cooperation between federal and state entities regarding planning, training, response, and communications in matters relating to homeland security.
- New Jersey is first State to implement this kind of MOA since Federal law was changed in August 2004. The MOA respects the historical balance of legal authority between federal and state agencies, while promoting a consistent application of law under a unified command regardless of who takes action.

- New Jersey is voluntarily undertaking to assist the Coast Guard. There is no promise of compensation under this agreement.
- This MOA will promote consistent and fair enforcement under the direction and control of the Coast Guard. Except for violations of state law alone, cases relating to safety or security zone violations detected by the New Jersey State Police Marine Unit pursuant to this agreement will be processed under the Coast Guard's civil penalty system or, at the discretion of the U. S. Attorney, prosecuted in federal court.

Glitzy Quotes.

- The Coast Guard has long benefited from an extremely effective working relationship with the new Jersey State Police. Countless examples of previous cooperation exist, from responding to heightened security threats in the port of New York and New Jersey, to routine operations during fireworks displays and celebrations in the harbor.
- The agreement is not the beginning of our partnership with New Jersey and its State Police Marine Unit, but yet another important step toward sharing resources and talents to best ensure the safety of New Jersey, its people, and its maritime commerce that is so vital to our national strength and security.
- This agreement is the new national model for future Coast Guard – State maritime security operations. We stand ready to implement similar arrangements with the other states within the First Coast Guard District who are interested in following Maine and New Jersey's lead.
- The State of New Jersey should be commended for its vision in taking steps to eliminate legal barriers to effective federal – state cooperation.
- Today, we merely formalize our long-standing commitment to cooperative enforcement of maritime security laws designed to protect the citizens of New Jersey and its economically vital ports, waterways, coastline, and critical infrastructure.
- The practical benefits of this new agreement are significant. With the expanded authority of the New Jersey enforcement officers, they can now be positioned in places that previously required Coast Guard coverage, or double coverage. In effect, we're able to better protect a larger swath of the Port of NY/NJ at any given time.
- The Coast Guard is also working to provide NJ state enforcement vessel with new equipment that will give us real-time tracking and communications capability, allowing us to position assets effectively and respond to incidents more quickly.

Talking Points for Rear Admiral Brice-O'Hara
Signing Ceremony for New Jersey Safety/Security Zone Enforcement MOA
16 December 2004

- This agreement establishes a key **partnership** between the Coast Guard and New Jersey to protect critical infrastructures and key assets in waters of concurrent jurisdiction.
 - This agreement **builds** on the strong **existing** relationships between the State and Coast Guard officials at the local level.
 - Does not detract from either State or Federal primacy for enforcement of laws within their waters.
 - Agreement furthers existing excellent relations with NJ in the areas of maritime safety, security, enforcement.
- Maritime and port security in New Jersey must be a **shared responsibility** between Federal, State, local governments and private industry stakeholders.
 - CG/NJ partnership is critical to leading that effort.
 - Agreement is fully **consistent with the intent of Congress** for promoting cooperation among all the "players" in the area of Homeland Security.
- The agreement ensures optimum utilization of limited Federal and State resources toward security risks in the maritime environment.
 - MOU does not obligate the CG to provide any funding to NJ for this effort. NJ assistance to CG is **voluntary**.
- The agreement **sets the framework for future cooperation** on other enforcement issues maritime safety and security concerns.
- Agreement is the result of dedicated work on the part of state and Coast Guard people. Particularly noteworthy is the **effort by the State** to enact legislation (which became effective in July 2004) to provide the state law framework for this cooperation.
- The Agreement takes full advantage of the **new Federal legislation** (Coast Guard Authorization Act of 2004) which specifically provides authority for state and local law enforcement officers to make arrests for violations of safety or security zones (under the Ports and Waterways Safety Act (PWSA) and/or Magnuson Act).
 - NJ first state MOU since the new Federal legislation.