

Immediate Response Authority During Natural Disasters

Doing what makes sense on the ground

by Col Jen Parker & Maj Dash Hixson

On Monday, 7 October 2024, it was clear that Hurricane Milton, the second major hurricane approaching the Florida coast in as many weeks, would barrel down on Florida's Greater Tampa Bay Area. The 4th Assault Amphibian Battalion (4th AABn) began preparations to weather this second storm, as did state and local officials, who were still reeling from Hurricane Helene, a Category 4 hurricane that battered Florida's Big Bend region and caused fifteen to twenty feet of storm surge and catastrophic flooding. Many of the battalion's members and families were under mandatory or voluntary evacuation orders and decided to leave the local community for their family's safety. Local officials knew resources were scarce and contacted the 4th AABn with an interesting request as Hurricane Milton was moving toward the Florida coast: would they be willing to stage several high-water vehicles at the Raymond James Stadium along with Marines so that they could be used in the aftermath of the storm if required?

Back in New Orleans, Marine Corps Forces Reserve (MARFORRES) staff were monitoring the situation carefully and discussing potential options during a commander's update brief. The SMCR units are anticipated to receive requests for support from civil authorities during times of crisis and emergency because home training centers are spread across 48 states. Further, these units are often closely connected

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to their local communities and are more likely to be singularly capable because of their access to specialized equipment and specially trained personnel. Weather forecasts indicated that Hurricane

Milton was a Category 5 hurricane, and one projected path had it hitting MARFORRES units in and around the Gulf coast of Florida, including the 4th AABn. The Staff Judge Advocate for MARFORRES reiterated the limitations for the use of defense support to civil authorities under immediate response authority to the gathered group. Under immediate response authority, Marine Corps commanders are authorized to provide an immediate response to a request for assistance from a civil



U.S. service members, members of the Jamaican Defence Force, and volunteers load relief supplies on an Army CH-47 Chinook helicopter at the port of Roseau, Dominica. The aircraft delivered rice and kitchen sets from the U.S. Agency for International Development to the community of Wotten Waven, Dominica. At the request of USAID, Joint Task Force-Leeward Islands has deployed aircraft and service members to assist in delivering relief supplies to Dominica in the aftermath of Hurricane Maria. (Photo by Sgt Ian Leones.)

authority to save lives, prevent human suffering, or mitigate great property damage within the United States. This can be done if imminently serious conditions and time do not permit approval from a higher authority. After review of the applicable limitations, the executive director for MARFORRES, SES2 Gregg Habel, directed the chiefs of staff for the major subordinate commands, including 4th MarDiv, to “[d]o what makes sense on the ground.”¹

Many of the tropical storms of the 2024 hurricane season were characterized by rapid intensification and large rainfall. Hurricane Helene moved into northern Georgia and Western North Carolina after making landfall in Florida, causing major flooding, extensive damage, and loss of life in the hundreds. Hurricane Milton’s early indicators warned it could be the most destructive hurricane of the season. Its sustained winds were clocked at more than 180 miles per hour. What was worse is that, unlike Hurricane Helene, nearly all computer models projected the storm would make landfall over the major metropolitan area of Greater Tampa Bay, which has a population of 3.18 million people. Considering the devastation that Hurricane Helene, a statistically weaker storm that struck a less-densely populated area at a higher elevation, visited on the southeastern United States just ten days earlier, the potential destructive power of Hurricane Milton was incredibly worrying. Civil authorities had less than 48 hours to prepare for the impact.

Local authorities’ capacity had been stretched thin already, and there were questions about whether Tampa and the state of Florida had the resources to effectively deal with Hurricane Milton. Florida is no stranger to hurricanes. The state is probably one of the best-equipped states to weather a hurricane. However, the last time a Category 5 hurricane made landfall in the Tampa Bay area was in 1921. In fact, no hurricane had passed through the Tampa Bay area since 1946, when a Category 1 hurricane hit Bradenton Beach and made its way north, barely maintaining its hurricane status as it travelled through Tampa.



Col Michael V. Samarov, the commander of Joint Task Force–Leeward Islands, helps load relief supplies onto a flatbed truck at Crayfish River, Dominica. (Photo by Sgt Ian Leones.)

Hurricane Helene required a significant amount of state resources, which became bogged down in relief efforts. Moreover, the situation in North Carolina and Georgia had deteriorated significantly because of immense rainfall and high winds. Despite Helene’s weakening status as it traveled over land, the amount of rain it continued dumping on these areas proved to cause unprecedented damage and loss of life. These inland communities were not able to absorb the amount of rainfall Helene shed in the same way that coastal cities were. Areas in the Black Mountains region were hit particularly hard, with heavy flooding causing significant damage in Asheville, Swannanoa, Morganton, and other similarly situated communities. Early reports had the death toll approaching 100, and missing persons reports were upward of 200. Federal agencies like the Federal Emergency Management Agency were assisting, but there were signs that aid was delayed as days passed, and assistance had still not made it to some hard-hit areas. Given these developments, local authorities in Tampa were concerned about the ability of federal and state agencies to assist. Local authorities offered to allow the 4th AABn to stage high-water vehicles from the Marine Corps in Raymond James Stadium—

home of the NFL’s Tampa Bay Buccaneers.

This set the stage for a potential request for military support. Site Support Tampa is the 4th AABn’s headquarters, located near the heart of the Tampa Bay area. It has at its disposal critical equipment and personnel that can meet the needs of civil authorities in a natural disaster, including Medium Tactical Vehicle Replacement, Logistics Vehicle Systems Replacement, Logistics Vehicle Systems Replacement Wreckers, and, most importantly, Marines and sailors specifically trained to operate in high-water environments. However, leadership needs to answer the following questions: Is a request to stage military equipment in a civilian facility to be ready for an expected future request for military support to civil authorities legal? Can active-duty military units lawfully prepare to potentially assist state and local authorities without knowing whether a request for immediate response would even be necessary?

Although the Posse Comitatus Act, 18 U.S.C. § 1385, generally bars federal military personnel from engaging in civilian law enforcement functions, there are federal statutes that authorize military support to civil agencies, including law enforcement, under

certain circumstances. One such federal authority lies within 10 U.S.C. Chapter 15, which authorizes the Secretary of Defense to provide military support to civil authorities, subject to certain limitations described in 10 U.S.C. § 275. *Department of Defense Directive 3025.18* outlines the rules across all the military services, and *Marine Corps Order 3440.7C* outlines those rules for the Marine Corps.

Pursuant to *Marine Corps Order 3440.7C*, the Marine Corps is tasked with certain roles and responsibilities in defense support of civil authorities (DSCA). This can be anything from undertaking military missions at home to defend the United States, its population and infrastructure from attack, to providing support in response to national emergencies or natural disasters when state and local resources are overwhelmed or when civil authorities are faced with challenges necessitating the utilization of the DOD's particular capabilities.

There are five primary mechanisms under which the DOD may engage in DSCA. The first is by direction of the President. The second, third, and fourth all come in response to a request for assistance from state or local authorities, another federal agency under the Economy Act, or a request from the Department of Homeland Security's Federal Emergency Management Agency following a declaration of a national disaster or emergency under the Stafford Act. Each of these situations requires approval by the Secretary of Defense. To be approved, a request for assistance (RFA) must meet the following six criteria: legality (compliance with the law), lethality (potential for the use of lethal force by or against DOD forces), risk (safety of DOD forces), cost (including the source of funding and the effect on DOD budget), appropriateness (whether the requested mission is in the best interest of the DOD to conduct), and readiness (impact on the DOD's ability to perform its primary mission). The fifth mechanism under this regime is known as the immediate response authority and must also meet these rigorous limitations.



Sgt Steven M. Holmes, a small craft mechanic with 3rd Force Reconnaissance Company, 4th MarDiv, inspects a combat rubber raiding craft at McCrady Training Center, SC. Reserve and active duty Marines and sailors from Marine Forces North and Marine Forces Reserve are poised to support the DOD in their efforts to provide FEMA with unique capabilities resident in their inventory. (Photo by Cpl Andy O. Martinez.)

Immediate response authority is further limited in several ways. First, the response is subject to any supplemental direction from higher headquarters. Second, immediate response authority does not permit actions that would subject civilians to the use of military power that is regulatory, prescriptive, or proscriptive. For instance, Marines are prohibited from conducting activities traditionally performed by law enforcement, such as searching, seizing, and arresting persons within the territory of the United States. Third, the ability of a commander to invoke immediate response authority is limited and should be used only for bona fide emergencies. It should also not be construed as an enduring support mechanism or as a form of RFA.

To ensure these limitations are respected, the Marine commander directing a response under immediate response authority is required to immediately notify the National Joint Operations and Intelligence Center, through the chain of command, of the details of any request and any approved response. Moreover, the immediate response shall end when the necessity giving rise to the request is no longer present, such

as when there are sufficient resources available from other agencies to respond adequately or when another department has initiated response activities. A higher commander in the chain of command may also direct an end to the immediate response authority. The commander, who authorized the support, is also required to reassess whether there remains a necessity to continue support under this authority as soon as practicable but not later than 72 hours after the initial request from civil authorities was received—if assistance is still ongoing at that point.

Understanding the legal framework underlying immediate response authority helps us analyze the Hurricane Milton response. When the request to stage high-water vehicles in Raymond James Stadium was received, this was not a request under immediate response authority. Rather, the commander of the 4th AABn directed the unit to stage these vehicles at the stadium before the storm hit to preserve his vital assets. Staging vehicles in preparation for a *possible* immediate response request is not itself immediate response support. *Marine Corps Order 3440.7C* provides that commanders must be prepared to

provide support in the event of a crisis. In these situations, units should plan to “be self-sustaining to the maximum degree possible in order to contribute to the situation as a net provider of essential services, rather than a net consumer of already limited resources.”² Failure to stage the vehicles before the hurricane

Marines and one sailor volunteered to remain behind with five high-water vehicles to preserve those assets.

Fortunately, Hurricane Milton ended up not being as destructive as had been anticipated. By the time it made landfall late on the evening of 9 October 2024, it had weakened to a

The 4th AABn was able to provide support to the city of Tampa, including search and rescue operations, road clearing, and transport of personnel to save lives and prevent unnecessary suffering. Later that same day, seeing that the emergency was no longer imminent and that local civil authorities had the situation well in hand, the commander, 4th AABn, directed the cessation of military support in Tampa. Without a thorough understanding of immediate response authority, these vital military resources might have been left untapped or worse, destroyed and unusable after a major natural disaster. The regulations authorizing immediate response authority allow commanders to “do what makes sense on the ground” and follow the law.

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made landfall would have jeopardized 4th AABn’s ability to provide support in response to an RFA or under immediate response authority. Because the 4th AABn facility is located on the bay, it is extremely susceptible to flooding. There was also a serious question of whether Marines would be able to access the facility after the hurricane hit. Placing vehicles capable of operating in high-water environments in a protected environment in coordination with civil authorities who were doing the same was the solution that made the most sense on the ground. In total, eleven

Category 3 hurricane. It then quickly slowed to Category 1. The city’s drains and infrastructure mitigated some of the flooding and destruction. However, windspeeds remained high, and a few tornadoes touched down. At 6:43 a.m. on 10 October 2024, the 4th AABn executed immediate response authority support to Tampa Fire Rescue by initiating seven rescues of civilians in flooded areas and clearing two roads to enable civilian emergency vehicles to pass. A report was initiated to the National Joint Operations and Intelligence Center through the chain of command.

Notes

1. Discussion with Greg Habel, Executive Director, Marine Forces Reserve, on October 8, 2024.
2. Headquarters Marine Corps, *MCO 3440.7C, Marine Corps Roles and Responsibilities in Defense Support of Civil Authorities (DSCA)* (Washington, DC: 2019).

