REMARKS BY

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BEFORE

THE U.S. COMMISSION ON OCEAN POLICY

THE COAST GUARD'S "PLAYER-COACH" ROLE IN OIL SPILL RESPONSE

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Admiral Watkins, distinguished members of the Ocean Commission, ladies and gentlemen, Good Morning. It is a privilege and a distinct pleasure to be with the Commission today as you continue your examinations into the activities and functions of the various federal agencies that collectively formulate and execute this nation's ocean and coastal policies.

I am Captain Robert Ross and currently serve as the Chief of the Office of Strategic Analysis working for the Commandant and the Chief of Staff in Coast Guard Headquarters and have no direct responsibility for the Coast Guard's environmental response programs. Unfortunately, all of the senior people in the environmental response program are involved in a multi-agency workshop looking at preparations for response to chemical, biological and radiological terrorist incidents, and none of them were able to break free from that important work to be able to be here today. However, I grew up in the Coast Guard's Marine Safety and Environmental Protection programs and I had the privilege of serving as the Federal On-Scene Coordinator in charge of the response to the largest U.S. coastal oil spill since the EXXON VALDEZ. Having lived at the sharp end of the environmental response spear, I can speak on this topic with some degree of expertise and I hope to be able to meet your information needs on the Coast Guard's oil and chemical spill response roles.

Before getting to the details of the “Player” and “Coach” roles, I want to set out several propositions for you to keep in mind. Once oil (or a hazardous substance) hits the water, perfection is no longer possible. From that point on, the best that we can hope for is to minimize, so far as circumstances permit, the total negative impact of the incident. Included in “total negative impact” are such factors as public health and safety impacts, environmental degradation, property damage, direct and indirect economic losses and cleanup costs, both public and private

Thus, my propositions are these:

First - The only perfect response to an oil spill is prevention.

Second – Prevention, no matter how fervently we pursue it, will never be 100%. Criminal acts, human errors, weather and other factors beyond our control create risks that can never be eliminated. Thus, even if we are not called on to respond to major incidents frequently, we must maintain a high degree of readiness to respond.

Third – The objective in responding to any oil or chemical spill, or any incident that threatens such a discharge, is to minimize the total negative impact of the incident, with “negative impact” considered in the broadest possible sense.

Finally, despite our best intentions and the frequently heroic efforts of responders, there are limits to what can be done. Weather, logistical difficulties and the limits of both human strength and the engineering sciences all constrain the art of the possible in spill response. On rare occasions there is, literally, nothing that can be done. More frequently, responders are faced with a need to sacrifice one valid interest to protect another valid interest. On every occasion, responders are faced with limits on what can or should be done. In short, oil spill response is very much the art of making difficult, time sensitive decisions with potentially major consequences and, all too often, making those decisions on less information than we would really like to have.

I have chosen to use the “Player-Coach” analogy to describe the Coast Guard’s spill response roles. While the “Player” role is important, I believe the “Coach” role is actually the more important and, given the larger issue of inter-agency coordination that the Commission is wrestling with, the more pertinent role for your consideration.

The “Coach” role is based on a clear statutory foundation that has evolved over more than 30 years. This foundation is contained in the Clean Water Act and a string of subsequent amendments, most notably the Oil Pollution Act of 1990, or OPA ’90, passed by the Congress in the aftermath of the EXXON VALDEZ spill. These statutes require the preparation of a National Contingency Plan, various Regional Response Plans and robust Area Contingency Plans. More importantly, these statutes, especially OPA ’90, require that these plans be developed in a collaborative manner with input from a host of involved entities. Among these are federal agencies, such as NOAA from whom you will be hearing in a minute, as well as cognizant agencies of state, territorial, local, and tribal governments.

Because of the importance of the National Oil and Hazardous Substances Response System (NRS), I want to go into it in a bit more detail. The Clean Water Act provides general emergency response authority to: “Ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance" when the discharge threatens navigable waters, shorelines, or natural resources of the U.S. At the highest level, this authority has been implemented by the establishment of the National Response Team and via the National Contingency Plan contained in Title 40, Code of Federal Regulations, Part 300. The EPA chairs the National Response Team, or NRT, while the Coast Guard serves as the Vice-Chair. The NRT incorporates 16 federal agencies, including the Departments of Defense, Justice, State, Agriculture, Energy, Interior, Commerce, Health and Human Services, and Labor, as well as the Nuclear Regulatory Commission, Federal Emergency Management Agency and General Services Administration. The next tier down is the Regional Response Teams, or RRTs, which are co-chaired by the Coast Guard and

EPA. The RRTs have similar membership to the NRT, but with the addition of representatives of state governments in the respective regions.

At the lowest level, where the rubber really meets the road, the National Response System is based on Area Contingency Plans prepared by pre-designated Federal On-Scene Coordinator, or FOSCs. In coastal areas, the pre-designated Federal on-Scene Coordinator is the local Coast Guard Captain of the Port. In inland areas, EPA is responsible for providing the FOSC, although the Coast Guard frequently fills that role for EPA under one of several Coast Guard/EPA Memoranda of Agreement. The dividing line between the coastal zone and the inland zone is usually a specific physical feature, such as a major highway. For certain kinds of events, such as a radiologic incident or an incident involving a Navy ship, the FOSC responsibility will be assumed by the appropriate responsible agency.

In coastal areas, Coast Guard FOSCs are assisted in preparing their Area Contingency Plans by Area Planning Committees. These Area Planning Committees are local in focus and are relatively inclusive in membership. Area Planning Committees include the various federal, state and local agencies that will be involved in executing any responses necessary under that Plan or which have “Trustee” responsibilities for an at-risk resource. Local environmental advocacy groups and local industry players may also be involved in providing input into Area Contingency Plans. Area Contingency Plans provide the local community context within which Vessel and/or Facility Response Plans will be executed. I will return to Vessel and Facility Response Plans later in my remarks.

While built around hypothetical scenarios, Area Contingency Plans themselves are not “cookbooks” providing detailed instructions on how every possible major response will be carried out in the area covered. There are simply too many potential variables for every possible scenario to be planned for. Rather, Area Contingency Plans set out a general organizational framework and response outline against which the involved agencies can exercise and train. Area Contingency Plans also serve as a compendium

of information that will be useful in the event of a spill, such as environmental sensitivity indexes, pre-agreed areas in which chemical countermeasures or in-situ burning have been pre-approved, pre-agreed procedures and criteria for making certain time-critical decisions, lists of available resources and points of contact, etc. Area Contingency Plans also provide the mechanisms for Endangered Species Act consultations that may be needed during the course of a given response.

While I will return to the Coast Guard's "Coach" role later, I would now like to turn to the "Player" side of the response equation, starting with the team member who should carry the largest part of the burden.

Under the Clean Water Act as amended, the United States has adopted a policy and philosophy that the responsibility for responding to discharges of oil and hazardous substances lies, first and foremost, with the spiller. In the case of vessels, that would be the vessel owner/operator rather than the owner of an oil or hazardous substance cargo. For land facilities, it is the facility owner/operator. The collective term of art for those who bear the legal responsibility to respond is "Responsible Party." This policy goes beyond merely "Spiller Pays." The United States actually puts the onus of conducting the response on those whose businesses create the potential for spills. Accordingly, owner/operators of specific categories of vessels and facilitys are required to prepare their own response plans and to have the capability, either through owned assets and corporate personnel or through contracted resources, to execute any required responses. Vessel Response Plans are reviewed and approved by the Coast Guard. Facility Response Plans are reviewed and approved by the EPA, the Coast Guard or the Minerals Management Service, depending on the nature and location of the facility. Beyond having a plan and assured access to response assets and personnel, vessel owner/operators are also required to have Certificates of Financial Responsibility proving they have the financial resources, at least up to their statutory limits of financial responsibility, required to conduct response operations.

As a result of the statutory and regulatory requirements for vessel and facility owner/operators to be able to show they have adequate resources to respond, a response contractor industry has grown up. Some response contractors provide incident management teams and services while others provide the actual cleanup equipment and personnel. In some areas, such as in Valdez, Alaska, vessel and/or facility owner/operators have their own organic response capabilities, in addition to resources available on contract.

Keeping large amounts of equipment and large numbers of trained personnel at every U.S. port and along all of our major waterways would be prohibitively expensive. Further, major spills aren't restricted to major ports and waterways, but can happen almost anywhere. For this reason, the general operational concept in spill response is built around smaller stockpiles of widely dispersed but strategically located equipment coupled with the ability to quickly cascade additional equipment to the scene when circumstances require. The Coast Guard owns some of this pre-positioned equipment while Oil Spill Response Organizations, or OSROs as the response contractors are known, own far larger stockpiles. Similarly, certain kinds of specialized and high-cost equipment, such as salvage and lightering equipment, dispersant applicators, in-situ burning equipment and specialized equipment for fighting vessel fires, are not available everywhere but rather are brought to the scene as and when required. Not withstanding the private sector's burden for bearing the brunt of the responsibility for response preparedness, there are three public-private agreements to address the high infrastructure and equipment costs associated with aerial dispersant application.

Unfortunately, while the law places great responsibility for carrying out response operations on the Responsible Party, I can tell you from personal experience that Responsible Parties aren't always up to the task. This can be for any of several reasons including simple incompetence, unwillingness to act as required by the law or inadequate financial resources to carry on after insurance is exhausted. In some cases, the Responsible Party may not be known at the outset of the event, and may

never be known. To deal with these kinds of situations, OPA '90 established the Oil Spill Liability Trust Fund to provide a ready source of funds with which the FOSC can carry out the necessary response. In most cases, and as was the case in both major coastal oil spills where I was the FOSC, this would be done using the same contractors that a Responsible Party would use. The Trust Fund is managed by the National Pollution Funds Center, which is run by the Coast Guard.

FOSCs can draw on a number of specialized teams maintained by various agencies to provide necessary support during a response operation. For example, the Coast Guard has three Strike Teams composed of personnel highly trained in oil and chemical response techniques, site safety procedures, incident Command and Control, salvage and lightering, and more. Coast Guard FOSCs can also draw on trained response personnel already under their command as Captains of the Port. As will be discussed by Mr. Keeney, NOAA provides a number of very important scientific support functions. I can tell you from personal experience that this kind of support is absolutely critical to a successful response and that NOAA is good at this job. In particular, strong scientific support is absolutely essential in answering one of the most difficult questions that arises in a major spill – specifically, "How clean is clean?" The Navy's Supervisor of Salvage is another source of expert assistance, not to mention a considerable source of equipment. Again, from personal experience, I can speak to the professionalism and dedication of the Navy SupSalv personnel with whom I have worked over the years. EPA also provides scientific support, as well as radiologic and chemical testing and monitoring. While I can't speak about the EPA from personal experience, I have heard they are also highly proficient.

The Resource Trustees and cognizant state, territorial, local and tribal governments are also members of the team. Their roles are to provide specialized advice and support related to the resources and populations for which they are responsible. Without their knowledge and assistance, it is possible that responders will do more harm than good. State, territorial, local and tribal governments are also particularly important in assisting with public health and safety issues, whether these involve evacuation from a potential

toxic chemical cloud or simply managing traffic to allow response equipment to get through.

As should be clear from the above, a successful response to a major oil or chemical spill is a complex undertaking involving many different entities and requiring deft decision-making that balances across a wide range of competing, and sometime irreconcilable, interests. Further, one of the key players in the response, the Responsible Party, may be facing financial ruin and possibly even criminal prosecution as a result of the spill. So, given this, how does the "Coach" manage the team?

The basic organizational model used by the Coast Guard is the Incident Command System or ICS. ICS evolved from the National Inter-Agency Incident Management System (NIIMS) initially developed for fighting large forest fires. In turn, both NIIMS and ICS are adaptations of standard military staff organization. Other emergency responders around the nation are increasingly adopting ICS. ICS is also the leading contender to become the National Incident Management System called for in President Bush's National Strategy for Homeland Security. It meets the identified incident management system criteria in that is provides common terminology for all parties, a unified command structure and scalability to meet the demands of incidents of all sizes.

The major oil carriers and producers have also adopted variants of ICS and most of the contracted response management teams are also ICS capable. This common approach to response organization greatly facilitates more rapid and more effective response operations. Less time is spent on arguing about how to organize so more time and energy is available for planning and then executing the response.

There is one point about responses under the OPA '90 amendments that merits a bit of discussion. This comes under the heading of "Unified Command." As I mentioned earlier, the Responsible Party, or RP, has a large role to play in planning and executing a response. This does not mean that the RP has the final say. To the contrary, under OPA '90, some of the principal stakeholders, including both local authorities and

state/territorial/tribal On-Scene Coordinators, also have a say. Further complicating the situation are the financial and other legal problems the RP may be facing. Because of these concerns, an RP's agenda may be considerably different than those of other involved parties. This is where the "Unified Command" comes in. As shown in the diagram on the next to last page in my remarks, the "Command" element in the ICS is made up of the FOSC, the state OSC, sometimes a local OSC (depending on state and local laws and preference), and the RP. In this "multiple decision-maker" arrangement, every effort is made to arrive at agreement in the Command element, based on science, operational facts and a multi-disciplinary approach to problem resolution. Despite the emotions involved and the significant issues at stake, it is usually possible to find mutually acceptable solutions to response problems. This is because, especially when you have a ***responsible*** Responsible Party, all involved share the common objective of minimizing the total negative impact of an incident. However, in the event that agreement is not possible, the FOSC has the final say. Thus, not only does the Coast Guard have a "Player-Coach" role, we also sometimes get to be the Referee as well.

I should point out that the FOSC's decision-making role, even in a response that will be largely carried out by the RP or the RP's contractors, and certainly with the RP's pocketbook, is one of the most significant changes from OPA '90. Prior to OPA '90, so long as the RP was conducting a credible response, the FOSC's role was much more that of an observer than that of a decision-maker. Now, the FOSC is fully engaged in planning and executing an appropriate response.

Finally, the best plans and planning system are useless if the "Response Community" that will have to actually execute a response is unfamiliar with the plans and with each other. To ensure that this is not the case, the Coast Guard has instituted a comprehensive Pollution Response Exercise Program, or PREP. Under the PREP program, various types of exercises are periodically conducted at the local, regional and national levels. Certain categories of potential RPs are also required to conduct specific types of drills and exercises. In a cooperative effort, major exercises are jointly

conducted with government and industry participation, and industry sponsorship. The "pre-need relationships" built through shared contingency planning, during Harbor Safety Committee meetings, during PREP exercises and in the course of normal day-to-day business are what really make the National Response System work.

Lest I mislead you, I should point out that the National Response System is not without its shortcomings. Among the issues the Coast Guard and other members of the response community are grappling with are the difficulties of maintaining a viable commercial response community in the face of declining accidents rates. This would apply to both the Oil Spill Response Organizations and the commercial salvage industry. Other issues of growing concern are extremely heavy residual fuel oils that can sink under certain circumstances, the increasing volumes of fuel oil carried by non-tank vessels – in some cases, the amount of fuel carried by modern cargo vessels is greater than the cargoes carried by some tankers of 20 to 30 years ago – and the increasing complexity of response to chemical discharges. In regard to the latter issue, I have also given you a copy of a presentation made by Rear Admiral Ralph Utley last year that you may find interesting.

In closing, let me make two points clear. First, the National Response System, while not problem free, is a significantly better and stronger system than existed prior to the EXXON VALDEZ. Second, OPA '90 deserves much of the credit for the improvements we have seen.

Thank you. I look forward to answering any questions.

Authorities

- National Contingency Plan 40 CFR 300
- Clean Water Act
  - Oil Pollution Act of 1990 (amended CWA)
- CERCLA aka Superfund
  - Emergency Planning and Community Right-to-Know Act (amended CERCLA)
- Resource Conservation and Recovery Act
  - Controlling hazardous wastes
  - Underground Storage Tanks

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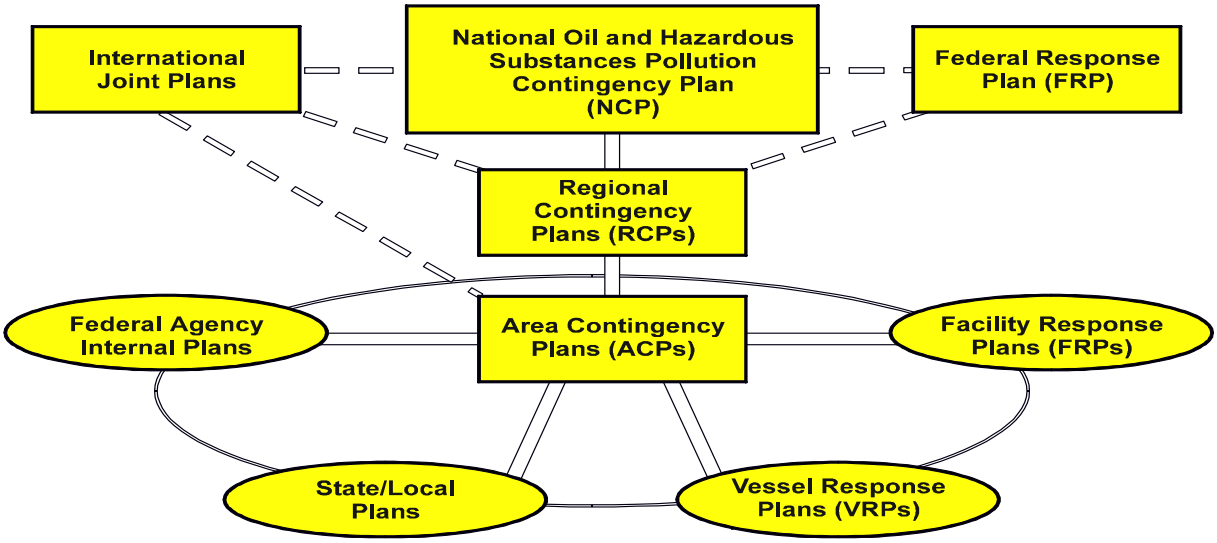
Planning Concepts



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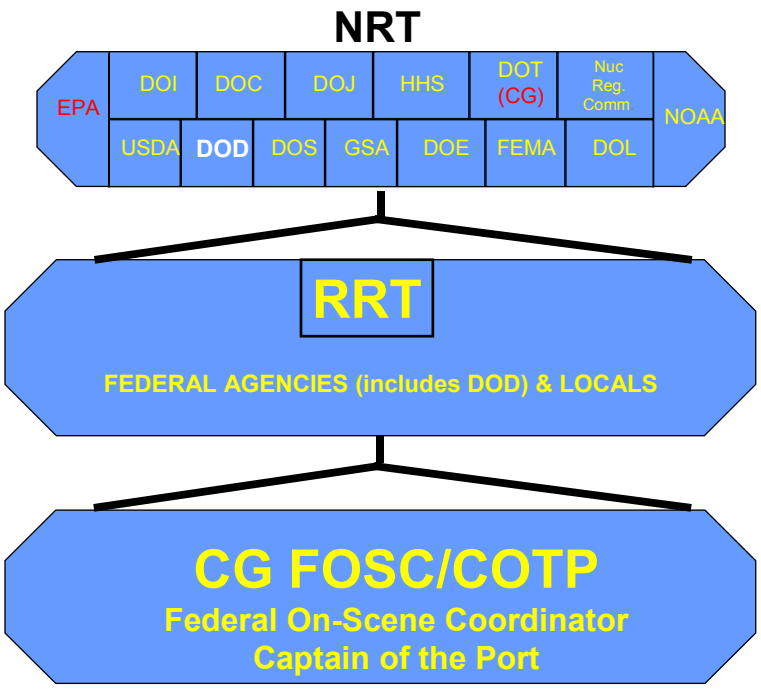
NRT
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NOAA
USDA
DOD
DOS
GSA
DOE
FEMA
DOL
RRT
FEDERAL AGENCIES (includes DOD) & LOCALS
CG FOSC/COTP
Federal On-Scene Coordinator
Captain of the Port

FOSC Response Assets

- Enforcement authorities to ensure that the responsible party (RP) cleans up the spill or release;
- Immediate access to technical assistance and cleanup contractors if the RP cannot adequately handle the problem;
- Immediate access to SUPERFUND and OIL SPILL LIABILITY TRUST FUND;
- Technical expertise from special federal teams; and
- Special equipment.

Oil Spill Liability Trust Fund

- Oil Spill Liability Trust Fund (OSLTF) Emergency Fund was established to provide funding for:
  - Emergency response actions
  - Natural Resource Damage Assessments (NRDA) initiation
  - Compensation for claimants who demonstrate that oil pollution caused damages

National Pollution Funds Center

- Administers the Oil Spill Liability Trust Fund
- Fund can be accessed by:
  - The FOSC directly - or under contract with the FOSC
  - State funding request (up to $250,000 per incident)
  - Submitting a claim to the NPFC
  - Lead federal trustees for Natural Resource Damage Assessment initiation
- More information can be found at:

  www.uscg.mil/hq/npfc/npfc.htm

Special Teams - EPA Environmental Response Team

- Sampling and Analysis
- Hazard Assessment
- Cleanup Techniques
- Specialized Technical Support
- Training and Education

Special Teams - NOAA & EPA Scientific Support Coordinators

- Environmental Chemistry
- Oil Slick Tracking
- Pollutant Transport Modeling
- Natural Resources at Risk
- Environmental Trade-off of Countermeasures and Cleanup
- Information Management
- Contingency Planning
- Liaison to Scientific Community

Special Teams - USCG National Strike Force

- USCG National Strike Force (NSF)
  - National Strike Teams - Atlantic, Gulf, and Pacific
  - National Strike Force Coordination Center (NSFCC)
  - USCG Public Information Assist Team (PIAT)
- USCG District Response Groups (DRG)

Special Teams - Navy
Supervisor of Salvage

- Salvage/Search and Recovery
- Shipboard Damage Control
- Diving

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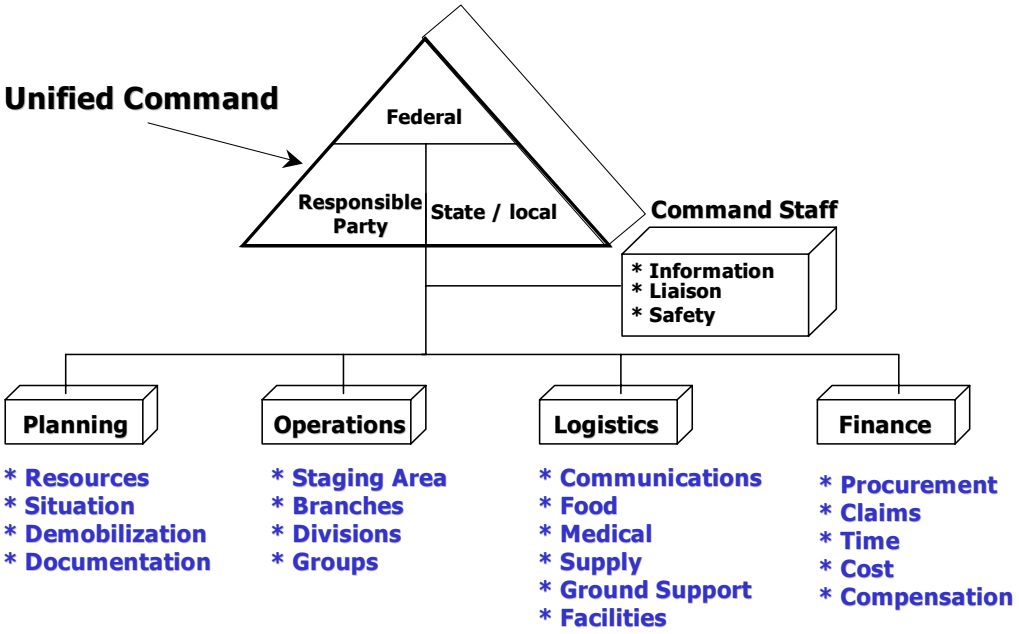
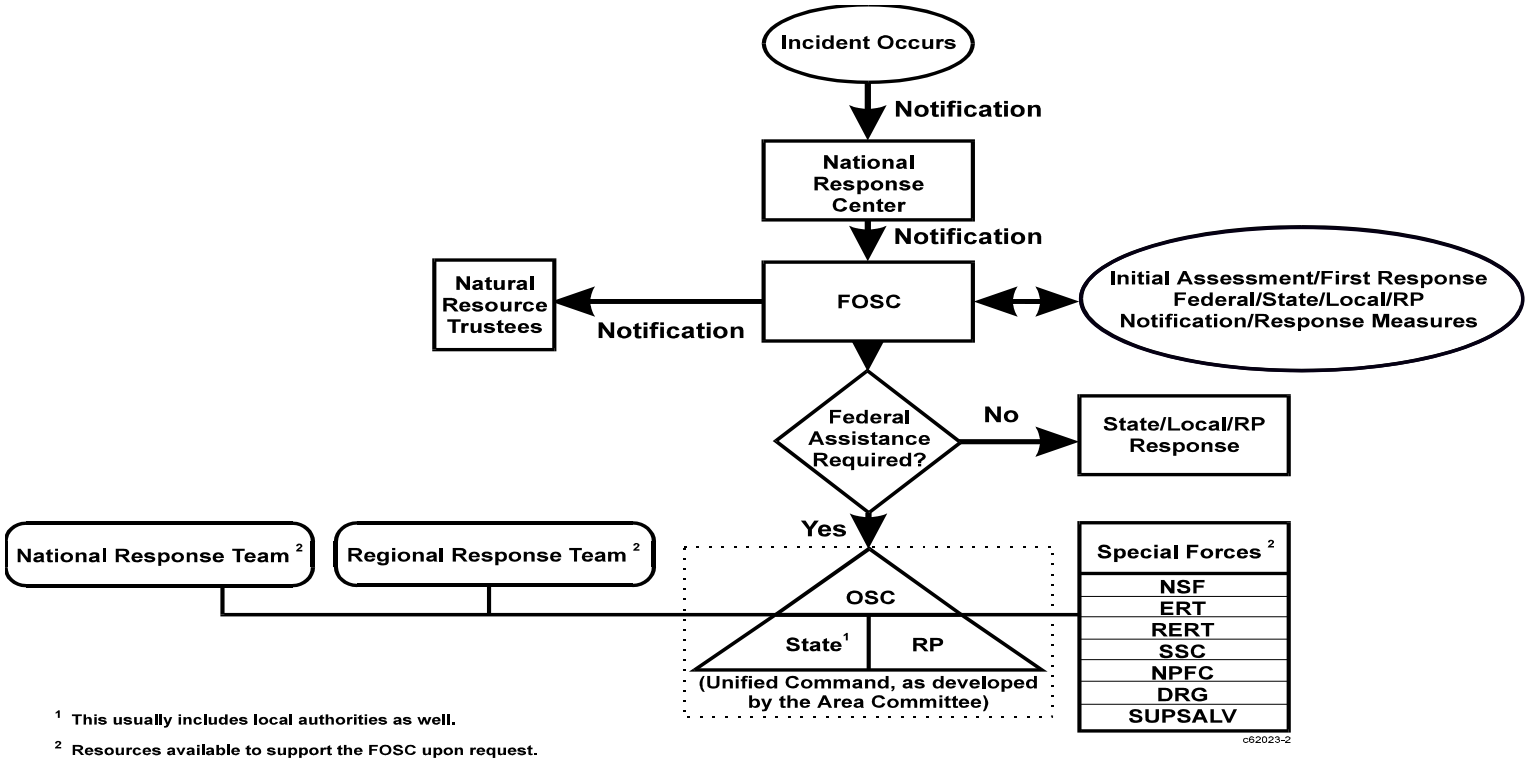
Incident Command System



NRS
Concepts of Response



[1] This usually includes local authorities as well.

[2] Resources available to support the FOSC upon request.

Source: Federal Register, Sep. 15, 1994, Vol. 59, No. 178, p. 47425 (NCP Final Rule)

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