

**Evolution of Interagency Cooperation in the United States Government: The Maritime Operational Threat Response Plan**

by

**Gary L. Tomasulo Jr.**

**B.S., Management  
United States Coast Guard Academy, 1991**

**J.D., Law  
Hofstra University School of Law, 2004**

**SUBMITTED TO THE ALFRED P. SLOAN SCHOOL OF MANAGEMENT IN  
PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF**

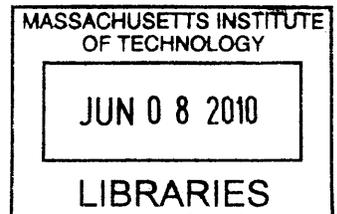
**MASTER OF BUSINESS ADMINISTRATION**

at the

**MASSACHUSETTS INSTITUTE OF TECHNOLOGY**

**June 2010**

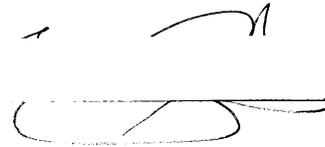
**ARCHIVES**



© 2010 Gary L. Tomasulo Jr. All rights reserved

**The author hereby grants to MIT permission to reproduce and to distribute paper and electronic copies of thesis document in whole or in part.**

Signature of Author: \_\_\_\_\_

  
MIT Sloan School of Management  
May 7, 2010

Certified by: \_\_\_\_\_

  
John Van Maanen  
Erwin H. Schell Professor of Organization Studies  
Thesis Advisor

Accepted by: \_\_\_\_\_

  
Stephen J. Sacca  
Director, MIT Sloan Fellows Program



# **Evolution of Interagency Cooperation in the United States Government: The Maritime Operational Threat Response Plan**

by

**Gary L. Tomasulo Jr.**

Submitted to the Alfred P. Sloan School of Management on May 7, 2010, in Partial Fulfillment of the Requirements for the Degree of Master of Business Administration

## **ABSTRACT**

Following the September 11, 2001 terrorist attacks, there was concern among maritime security experts that terrorist or criminal organizations that wanted to do harm to the United States could exploit gaps that existed between the various government agencies responsible for maritime security. These gaps resulted from a lack of clear roles and responsibilities between the agencies where no one organization could easily be identified as having the lead over the other agencies across the range of maritime threat response actions.

The Maritime Operational Threat Response (MOTR) Plan, the topic of this thesis, is an attempt to close the gaps by providing an effective framework to coordinate and utilize the unparalleled capabilities of the U.S. Government and enhance the security of the American public. The MOTR Plan is a Federal interagency process to achieve coordinated action and desired national outcomes. Before the creation of the MOTR Plan there was no formal interagency process to address the broad spectrum of maritime threats. The Presidential Directive (PD-27) Process was used in a limited number of cases, but lacked detailed guidance and a clear framework to coordinate interagency planning and response operations.

Since its implementation in October 2005, the MOTR Plan has been successfully employed for hundreds of routine maritime threats and a number of low-frequency/high risk threats. These cases include drug and migrant interdiction, fisheries violations, bomb threats, radiation/nuclear alarm resolution, and piracy. Senior government leaders have heralded the MOTR Plan as a model plan for interagency coordination and cooperation.

This thesis focuses on the MOTR Plan and whether it is effective at providing a framework and process to coordinate and leverage the authorities, competencies, and capabilities of the federal government agencies responsible for maritime security. The thesis also provides contextual information, including the importance and complexities of the maritime domain, the primary types of threats that the United States faces in the maritime domain, and the maritime security capabilities that it has to address them. The thesis also discusses maritime security interagency coordination before the MOTR Plan, focusing on the PD-27 Process, and the inadequacies of this process.

Thesis Supervisor: John Van Maanen  
Erwin H. Schell Professor of Organization Studies

## ACKNOWLEDGEMENTS

I am extremely grateful to Professor John Van Maanen, who helped guide my efforts throughout the preparation of this thesis. His wisdom and perspective were invaluable to the development and writing of my thesis. I am also grateful to Captain Eric Jones, SF '05 for his guidance and advice in selecting a thesis topic, and for helping me navigate and get the most out of my Sloan experience.

I would also like to recognize the many government officials that assisted me in my research. In particular, I want to thank the officials that allowed me to interview them, and made themselves available for follow-on questions and requests for additional information. I am also indebted to the following government agencies and offices for their support of my research: National Security Staff's Office of Transborder Security at the White House; Coast Guard's Deputy Commandant for Operations Staff; Coast Guard's Office of Law Enforcement; Coast Guard's Office of Maritime and International Law; Department of Justice's Narcotic and Dangerous Drug Section; Department of State's Office of the Legal Advisor for Oceans, Environment and Science; Department of Defense's Office of the Assistant Secretary of Defense for Homeland Defense and Americas' Security; and the Global MOTR Coordination Center.

Most importantly, I want to recognize the unwavering love and support from my wife Kelli and our sons Gary and Colin. Their understanding, support, and many sacrifices during this past year were critical to my success. I am truly blessed to have them in my life.

## **DEDICATION**

This work is dedicated to the memory of my father, Gary L. Tomasulo Sr., who died in a tragic accident on September 7, 2009. His integrity, work ethic, and self-sacrifice were an inspiration to me. He believed in the American dream and all the possibilities that it offered for those that are willing to better themselves through education, and a willingness to work hard, and sacrifice. Family meant the world to my father and he demonstrated that by being a devoted husband, father, and grandfather. He is deeply missed, but precious memories of him live on in the hearts of all those that knew and loved him.

# TABLE OF CONTENTS

<b>TITLE PAGE</b> .....	1
<b>ABSTRACT</b> .....	3
<b>ACKNOWLEDGEMENT</b> .....	4
<b>DEDICATION</b> .....	5
<b>TABLE OF CONTENTS</b> .....	6
<b>CHAPTER 1 – INTRODUCTION</b> .....	8
Methodology.....	10
<b>CHAPTER 2 – THE MARITIME DOMAIN</b> .....	15
Complexities of the Maritime Domain.....	17
Types of Threats in the Maritime Domain.....	20
Maritime Security Capabilities.....	24
Department of Homeland Security.....	24
Department of Justice.....	27
Department of Defense.....	30
Department of State.....	32
Employment of Maritime Security Capabilities.....	33
<b>CHAPTER 3 – ORIGINS OF THE MOTR PLAN</b> .....	37
Simas Kudirka Case.....	37
Presidential Directive/PD-27.....	39
Example of a Pre-MOTR Case.....	42
Impetus for MOTR Plan.....	43
NSPD-41/HSPD-13.....	47

<b>CHAPTER 4 – MARITIME OPERATIONAL THREAT RESPONSE PLAN.....</b>	<b>48</b>
What is MOTR?.....	48
MOTR Case – WARM SEAS VOYAGER.....	52
Interagency Development of the MOTR Plan.....	55
Why MOTR Was Needed (Necessity).....	55
Agency Resistance to the MOTR Plan and the MAERSK ALABAMA.....	57
MOTR Drafting Process.....	58
Impact of Personality.....	59
MOTR Implementation.....	62
MOTR Protocols.....	63
Recent Developments – Global MOTR Coordination Center.....	65
<b>CHAPTER 5 – CONCLUSIONS/RECOMMENDATIONS.....</b>	<b>67</b>
Recommendations.....	68
<b>APPENDIX A – MARITIME JURISDICTIONAL AREAS.....</b>	<b>70</b>
<b>BIBLIOGRAPHY.....</b>	<b>71</b>

## CHAPTER

# 1

## Introduction

---

One frequently leveled criticism about the United States federal government is the difficulty that government agencies<sup>1</sup> have in effectively communicating, coordinating and implementing policy or executing operations with each other. This phenomenon occurs at all levels of government -- local, state, and federal. However, this problem is not unique to government as many large corporations face similar challenges. The difficulties occur due to a number of issues. They range from unclear roles and responsibilities, to interagency competition for resources, and, at times, a power struggle to be designated as the lead agency. The consequence for the American public is a less efficient and effective government. In the area of national security, the consequences of this weakness can lead to security lapses and vulnerabilities, or even worse, a catastrophic event. The September 11, 2001, terrorist attacks on the United States brought the issue of overlapping federal agency roles and responsibilities and interagency coordination to the forefront.

The September 11, 2001, terrorist attacks forced the United States to reevaluate its strategy, policies, and resources dedicated to protecting the American public and the homeland. One area of focus was the maritime domain<sup>2</sup>. There was concern among maritime security experts that terrorist or criminal organizations that wanted to do harm to the United States could

---

<sup>1</sup> United States executive branch departments, agencies, and establishments. Maritime Operational Threat Response For The National Strategy For Maritime Security, The White House, at 2 (October 2006).

<sup>2</sup> “[A]ll areas and things of, on, under, relating to, adjacent to, or bordering on a sea, ocean, or other navigable waterway, including all maritime-related activities, infrastructure, people, cargo, and vessels and other conveyances.” *Id.*

exploit gaps that existed between the various government agencies responsible for maritime security. These gaps resulted from a lack of clear roles and responsibilities between the various government agencies where no one organization could easily be identified as having the lead over the other agencies across the range of threat response actions. The Maritime Operational Threat Response (MOTR) Plan, the topic of this thesis, is an attempt to close the gaps by providing an effective framework to coordinate and utilize the unparalleled capabilities of the U.S. Government and significantly enhance the security of the American public. There was little resistance to the need for a maritime threat response plan, but the agencies responsible for maritime security recognized that the challenge would be in agreeing on the details of the Plan.

The final MOTR Plan, issued in October 2006, provides a Federal interagency process to achieve desired outcomes and coordinated actions in response to threats in the maritime domain. The Plan directs “the establishment of an integrated network of existing national-level maritime command and operations centers to achieve coordinated, unified, timely, and effective planning and mission accomplishment by the U.S. Government.”<sup>3</sup> Since its implementation the MOTR Plan has been extremely effective at handling various maritime threats ranging from piracy cases off the Horn of Africa to drug and migrant interdiction cases in the Florida Straits.

My interest in this research stems from my nearly nineteen years of service as a Coast Guard officer. Most of my career has been focused on national security issues. My perspective has been shaped by operational, policy, and legal experience in the Coast Guard. I also benefitted from representing the Coast Guard as a Congressional Fellow for a U.S. Senator, and a Director at the National Security Council at the White House. In these capacities I had the unique opportunity of being directly involved in writing and shaping national security policy

---

<sup>3</sup> *Id.*

issues with the legislative and executive branches of our government. My maritime security operational experience includes serving as a maritime law enforcement officer, assignments aboard three different Coast Guard cutters, including one of which I served as commanding officer. A common challenge and frustration I experienced in both the policy and operational environment is the inability of government agencies to work together in an effective and coordinated manner. The cases where the U.S. Government fails to properly handle or address a maritime threat are usually not the result of a lack of competency or capabilities, but one of communication and coordination. The MOTR Plan attempts to solve this challenge in maritime threat response operations and may serve as a model that can be applied to other areas of the federal government.

### ***Methodology***

I began my research by reading the MOTR Plan, and Protocols. This enabled me to review the purpose and scope of the MOTR Plan. In addition, I was able to re-familiarize myself with the agency roles and responsibilities and prescribed interagency coordination relationships for MOTR planning and execution. Next, I reviewed the MOTR Protocols that describe how to implement the current operations provisions of the MOTR Plan.

I then turned my attention to a review of national strategy documents that led to the creation of the MOTR Plan. I began with a review of the National Security Strategy. In addition, I read National Security Presidential Directive-41 (NSPD-41)/Homeland Security Presidential Directive-13 (HSPD-13) on Maritime Security Policy, which directed the coordination of maritime security policy through the creation of a National Strategy for Maritime Security and eight supporting implementation plans. The MOTR Plan is one of the eight

supporting plans. I reviewed the National Strategy for Maritime Security and briefly reviewed some of the other supporting implementation plans.

Additionally, I reviewed all newspapers, periodicals, Government Accountability Office, and Congressional Research reports on the MOTR Plan. My research focused on discovering articles and reports that discussed the level of interagency cooperation and coordination resulting from the MOTR Plan. The reports also discussed national level exercises, and assessed the level of implementation of the MOTR Plan and the other supporting maritime security plans.

I also conducted a thorough search of all Congressional Hearings on Maritime Security held since 2004, when NSPD-41/HSPD-13 – Maritime Security Policy was issued. This research led to discovering testimony by federal officials from the primary agencies with MOTR responsibilities. These officials commented and provided assessments on the value of the MOTR Plan and its success at coordinating government responses to maritime threats in both exercises and actual events.

I then contacted representatives from the four key stakeholder agencies involved in the MOTR Plan, including the Departments of Defense, Homeland Security, Justice, and State. I travelled to Washington, DC to interview senior government officials that are listed below:

- Rear Admiral Tom Atkin, U.S. Coast Guard currently assigned as Special Assistant to the President and Senior Director for Transborder Security Policy. Admiral Atkin serves on the National Security Staff<sup>4</sup> at the White House and chairs the Maritime Security Interagency Policy Committee (MSIPC). The MSIPC is the primary forum for

---

<sup>4</sup> The National Security Staff is the President's principal forum for considering national security, homeland security, and foreign policy matters with his senior national security advisors and cabinet officials. The Staff also serves as the President's principal arm for coordinating these policies among various government agencies. *Maritime Security – National Strategy and Supporting Plans Were Generally Well-Developed and Are Being Implemented*, U.S. Government Accountability Office, at 2 (June 2008).

coordinating U.S. national maritime strategy.<sup>5</sup> In addition, in 2005, Admiral Atkin served in the Department of Defense's Office of the Secretary of Defense for Homeland Defense and played an integral role in the drafting and adoption of the MOTR Plan.

- Commander Sean Regan, U.S. Coast Guard currently assigned as the Director Maritime Security Policy, National Security Staff at the White House. Commander Regan chairs the Maritime Security Working Group (MSWG), which monitors federal government efforts to enhance maritime security, including HSPD-13. The MSWG reports to the MSIPC.<sup>6</sup>
- Wayne Raabe, Principal Deputy Chief of the Narcotic and Dangerous Drug Section at the Department of Justice. Mr. Raabe was part of the interagency team that drafted the MOTR Plan and Protocols. In addition, Mr. Raabe is a member of the MOTR Current Operations Implementation Team (COIT), and was a key player in MOTR's implementation, and continued success.
- Commander Andrew Kuepper, U.S. Navy (retired), Director, Homeland Defense Strategy and Implementation at the Department of Defense. Commander Kuepper was also part of the interagency team that drafted the MOTR Plan and Protocols. Commander Kuepper is also a COIT member and one of the driving forces in MOTR being implemented in the Department of Defense.
- Kevin Baumert, Attorney-Advisor, Office of the Legal Advisor for Oceans, Environment and Science at the Department of State. Mr. Baumert is a member of the COIT, and represents the Department of State on MOTR coordination calls.

---

<sup>5</sup> National Security Presidential Directive (NSPD-41)/Homeland Security Presidential Directive (HSPD-13): *Maritime Security Policy*, at 3 (December 4, 2004).

<sup>6</sup> *Maritime Security Interagency Policy Committee – National Strategy and Supporting Plans Were Generally Well-Developed and Are Being Implemented*, U.S. Government Accountability Office, at 1 (June 2008).

- Gary Rasicot, Director of Global MOTR Coordination Center (GMCC). The GMCC was recently established and Mr. Rasicot assumed his position on February 16, 2010. The GMCC is responsible for coordinating national standards, regulations and policies to implement the MOTR Plan and Protocols.
- Rear Admiral Sally Brice-O'Hara, Deputy Commandant for Operations, U.S. Coast Guard. Admiral Brice-O'Hara is responsible for overseeing the strategic integration of Coast Guard operational missions and the optimization of policy development and mission execution. Admiral Brice-O'Hara previously served as Commander of the Fourteenth Coast Guard District where she experienced the impact of the MOTR Plan from an operational Commander's perspective.
- Captain Michael Tekeskey, Chief, Coast Guard's Office of Law Enforcement. Captain Tekeskey's and his staff represent the U.S. Coast Guard on MOTR coordination calls.
- Commander Tim Connors, Chief of the Operations Law Group, U.S. Coast Guard Headquarters. Commander Connors leads the legal group that provides real-time operational legal counsel to the Coast Guard's Deputy Commandant for Operations on full range of Coast Guard operations, including MOTR.

In addition to the research I conducted above, I was able to draw on my past experience as the Legal Advisor to the Coast Guard's Office of Law Enforcement where I participated in numerous MOTR coordination calls on behalf of the Coast Guard. My MOTR experience ranged from migrant and drug trafficking cases in the Eastern Pacific Ocean to piracy cases off of Africa and foreign flagged commercial vessels bound for the U.S. with suspect cargo or persons onboard.

This thesis focuses on the MOTR Plan and whether it is effective at providing a framework and process to coordinate and leverage the authorities, competencies, and capabilities of the federal government agencies responsible for maritime security. In Chapter 2, I begin by providing contextual information, including the importance and complexities of the maritime domain, the primary types of threats that the United States faces in the maritime domain, and the maritime security capabilities that it has to address them. Next, in Chapter 3, I discuss maritime security interagency coordination before the MOTR Plan, mainly focusing on: 1) the Presidential Directive (PD-27) process; 2) the inadequacies of this process to address the asymmetric threats of a post 9/11 world; and 3) what the MOTR Plan was designed to rectify. Then, in Chapter 4, I explain how the MOTR Plan was developed, what it is, how it works, and how it has been applied. Finally, in Chapter 5, I provide conclusions, and recommendations to improve the MOTR Plan.

# CHAPTER 2 The Maritime Domain

---

**A strong world economy enhances our national security by advancing prosperity and freedom in the rest of the world. Economic growth supported by free trade and free markets creates new jobs and higher incomes. It allows people to lift their lives out of poverty, spurs economic and legal reform, and the fight against corruption, and it reinforces the habits of liberty. We will promote economic growth and economic freedom beyond America's shores.**

**National Security Strategy of the United States, March 2006**

The security and prosperity of the United States is dependent on its ability to safely and securely use the world's oceans and waterways. The U.S. maritime transportation system<sup>7</sup> is vital to the global economy. More than 80 percent of the world's trade travels by water.<sup>8</sup> For the United States, the importance is even greater; with more than 95 percent of U.S. international trade transported by water.<sup>9</sup> United States seaports handle more than \$700 billion of the nations' Gross Domestic Product (GDP) and 2 billion tons of domestic and international freight annually.<sup>10</sup> A terrorist attack in a seaport could paralyze the international supply chain<sup>11</sup> and

---

<sup>7</sup> The United States Marine Transportation System (MTS) is a complex combination of waterways, ports, terminals, inter-modal connections, vessels, people, and support services that intertwines the public and private sectors. Thad Allen, Commandant, U.S. Coast Guard, *Friend or Foe? Tough to Tell*, PROCEEDINGS MAGAZINE, U.S. Naval Institute (October 2008).

<sup>8</sup> National Strategy for Maritime Security, The White House, at 1 (March 2005).

<sup>9</sup> *Maritime Security – National Strategy and Supporting Plans Were Generally Well-Developed and Are Being Implemented*, U.S. Government Accountability Office, at 1 (June 2008).

<sup>10</sup> U.S. COMMISSION ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21<sup>ST</sup> CENTURY 31 (2004).

<sup>11</sup> A supply chain as defined in the Department of Homeland Security's Strategy to Enhance International Supply Chain Security is the end-to-end process for shipping goods to or from the United States beginning at the point of origin (including manufacturer, supplier, or vendor) through point of distribution to the destination. *Maritime Security – National Strategy and Supporting Plans Were Generally Well-Developed and Are Being Implemented*, U.S. Government Accountability Office, at 7 (June 2008).

result in the loss of billions of dollars in economic activity.<sup>12</sup> For example, in 2003, when a labor dispute closed the port of Los Angeles/Long Beach the cost to the American economy was \$1 billion per day.<sup>13</sup>

Our seaports and waterways are not only the lifeblood of commerce for the United States, but for our international partners as well. Everyday nearly 700 ships arrive in U.S. ports, and 8,000 foreign flagged vessels, manned by 200,000 foreign mariners, enter U.S. ports each year.<sup>14</sup> In addition, cruise ships visiting foreign destinations embark from 16 U.S. Ports, and U.S. ferries move 113 million passengers and 32 million vehicles each year.<sup>15</sup> The economic importance of the U.S. Marine Transportation System cannot be overstated and continues to grow.

The oceans not only provide a highway for world commerce, but they are also a source of minerals, food, and recreation for the United States.<sup>16</sup> The United States has a vital economic and national security interest in the protection and preservation of the resources in its exclusive economic zone (EEZ)<sup>17</sup>. In fact, the United States' EEZ is the largest in the world, spanning over 13,000 miles of coastline and containing 3.4 million square nautical miles of ocean—larger than the combined land area of all fifty states.<sup>18</sup> The exclusive economic zone contains important natural resources including fisheries, oil, and minerals. For example, approximately 30 percent of the United States' domestic oil supplies and 25 percent of its natural gas supplies

---

<sup>12</sup> *Id.* at 1.

<sup>13</sup> Thad Allen, Commandant, U.S. Coast Guard, *Friend or Foe? Tough to Tell*, PROCEEDINGS MAGAZINE, U.S. Naval Institute (October 2008).

<sup>14</sup> *Id.*

<sup>15</sup> U.S. Coast Guard, <http://www.uscg.mil/lantarea/msst91114/> (last visited April 5, 2010).

<sup>16</sup> National Strategy for Maritime Security, The White House, at 1 (March 2005).

<sup>17</sup> A State's Exclusive Economic Zone starts at the seaward edge of its territorial sea and extends outward to a distance 200 nautical miles (370 km) from the baseline. United Nations Convention on Law of the Sea, art. 55, December 10, 1982.

<sup>18</sup> U.S. COMMISSION ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21<sup>ST</sup> CENTURY, ii (2004).

are produced from offshore areas.<sup>19</sup> These energy supplies are a major source of revenue and directly support tens of thousands of jobs.<sup>20</sup> Sustainability of fishery resources is critical to the United States as a source of food, jobs, and revenue. Additionally, the United States coasts and oceans attract millions of visitors that spend billions of dollars and directly support more than 1.5 million jobs.<sup>21</sup>

The United States is a littoral country and historically the oceans have provided a buffer and sense of security, which has diminished with the growth of globalization. Further, more than 90 percent of all the war fighting capabilities required to project U.S. power overseas flow from U.S. seaports of embarkation.<sup>22</sup>

### ***Complexities of the Maritime Domain***

Protecting the maritime domain is complex due to its sheer size and openness, the number of vessels and people that operate in it, and the legal framework by which it is governed. An added challenge is balancing the free flow of commerce, which is critical to our nations economic strength, with preserving its security.

In the United States there are 361 ports that provide countless high value targets for terrorist organizations to exploit, including container vessels, bridges, chemical and nuclear plants, and waterfront facilities.<sup>23</sup> The ports also provide an opportunity for terrorist and criminal organizations to introduce illicit personnel or equipment into the United States. Adding to the complexity is that the parts of the Maritime Transportation System that terrorist

---

<sup>19</sup> *Id.* at 33.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> U.S. Coast Guard, <http://www.uscg.mil/lantarea/msst91114/> (last visited April 5, 2010).

<sup>23</sup> Port and Maritime Security Strategy: Hearing Before Subcomm. on the Coast Guard and Maritime Transportation, U.S. House of Representatives, 107th Cong. (December 6, 2001) (statement of Admiral James M. Loy, Commandant U.S. Coast Guard).

organizations are likely to target are in large part owned by the private sector.<sup>24</sup> Thereby, creating countless challenges for the U.S. Government to protect the Maritime Transportation System.

The majority of actors and activities in the maritime domain are legitimate. The difficulty for maritime security organizations is the ability to sort the legitimate from those that pose a threat. This is a daunting task when considering the vastness of our coastline, number of ports, and the volume of people and cargo that travel through them daily. For example, containerized shipments are a major security challenge for the United States. Everyday, more than 30,000 containers enter the United States.<sup>25</sup> It is impossible to physically inspect the cargo of each container without effectively shutting down the port, and crippling the U.S. economy. To address this challenge the U.S. Government uses an intelligence driven risk-based inspection methodology to target the containers that pose a possible risk.

The vast number of vessels coupled with the difficulty of determining a vessel's intent makes detection and monitoring of potential threats a challenge for maritime security agencies. This challenge is apparent in efforts to combat potential small vessel attacks<sup>26</sup> on high value targets in our ports and waterways. Small vessels can also be used to smuggle terrorist and contraband into the United States. The small vessel threat has been analogized to searching for a needle-in-a-haystack. There are 13 million registered small vessels and up to 8 million non-registered U.S. recreational vessels.<sup>27</sup> To add to the complexity, there are approximately 100,000

---

<sup>24</sup> National Strategy for Maritime Security, The White House, at 10 (March 2005).

<sup>25</sup> *Id.* at 21.

<sup>26</sup> A small vessel attack can range from a simple improvised explosive device to a Weapon of Mass Destruction (WMD). Thad Allen, Commandant, U.S. Coast Guard, *Friend or Foe? Tough to Tell*, PROCEEDINGS MAGAZINE, U.S Naval Institute (October 2008).

<sup>27</sup> *Id.*

fishing boats in the United States.<sup>28</sup> These vessels routinely operate in U.S. waterways in close proximity to container vessels, chemical plants, and high-density population centers. The United States experienced the physical destruction and devastating psychological impact that results when this type of threat is transformed into action when al Qaeda attacked the USS COLE in Yemen in October 2000.

The legal framework that governs the maritime domain is unique and complex. Government agencies in this arena must understand the legal framework of the environment to operate effectively, including details and nuances of the law of the sea, and domestic interpretations and applications of that law. International and domestic laws provide guidelines for determining rights and obligations on the seas. Most of the ocean area is “high seas”<sup>29</sup> and available for use of all nations. However, those parts near the coast are divided into areas where the coastal State may exercise a great deal of sovereignty and control, specifically over resource related activities like fisheries or mineral extraction. For operational purposes, the world’s oceans are divided into two parts: national waters, which include internal waters<sup>30</sup>, and territorial seas<sup>31</sup>. These are subject to the exclusive territorial sovereignty of the coastal States. The second, international waters, includes contiguous zones<sup>32</sup>, the exclusive economic zone, and high

---

<sup>28</sup> *Id.*

<sup>29</sup> The high seas include all parts of the ocean seaward of the exclusive economic zone. See Appendix A for a chart of maritime jurisdictional areas. United Nations Convention on Law of the Sea, art. 86, December 10, 1982.

<sup>30</sup> Internal waters are landward of the baseline from which the territorial sea is measured. From the standpoint of international law, internal waters have the same legal character as land itself. ANNOTATED SUPPLEMENT TO THE COMMANDER’S HANDBOOK ON THE LAW OF NAVAL OPERATIONS 15 (U.S. Naval War College International Law Studies Vol. 73).

<sup>31</sup> Territorial sea is a belt of ocean, which is measured seaward from the baseline of the coastal nation and subject to its sovereignty. United Nations Convention on Law of the Sea, art. 2. The U.S. claims a 12-nautical mile territorial sea and recognizes claims of other nations up to a maximum breadth of 12 nautical miles. Presidential Proclamation 5928, 27 December 1988, 54 Fed. Reg. 777, 9 Jan. 1989.

<sup>32</sup> Contiguous zone is an area adjacent to the territorial sea and extends 24 nautical miles from the baseline in which the coastal nation may exercise the control necessary to prevent or punish infringement of its customs, fiscal, immigration, and sanitary laws and regulations that occur. United Nations Convention on Law of the Sea, art. 33, December 10, 1982.

seas, where all States enjoy the high seas freedoms of navigation and overflight<sup>33</sup>. International and domestic laws strongly shape U.S. maritime law enforcement and interdiction policies across a spectrum of activities including: illicit drug and migrant interdiction operations; piracy; enforcement of Security Council resolutions; and acts of violence in maritime navigation. Generally, these laws focus on the exclusive jurisdiction of flag States on the high seas, and the sovereign rights and control exercised by coastal States in coastal waters. With the exception of acting in national or self-defense<sup>34</sup>, or for a limited number of recognized universal offenses<sup>35</sup>, flag or coastal state consent is required to enforce laws and regulations against a foreign flagged vessel on the high seas or in the national waters of another country.

#### *Types of Threats in the Maritime Domain*

**Terrorist can develop effective attack capabilities relatively quickly using a variety of platforms, including explosives-laden suicide boats and light aircraft; merchant and cruise ships as kinetic weapons to ram another vessel, warship, port facility, or offshore platform; commercial vessels as launch platforms for missile attacks; underwater swimmers to infiltrate ports; and unmanned underwater explosive delivery vehicles. Mines are also an effective weapon because they are low-cost, readily available, easily deployed, difficult to counter, and require minimal training. Terrorists can also take advantage of a vessel's legitimate cargo, such as chemicals, petroleum, or liquefied natural gas, as the explosive component of the attack. Vessels can be used to transport powerful conventional explosives or WMD for detonation in a port or alongside an offshore facility.**

**Terrorist Threats – National Strategy for Maritime Security (September 2005)**

---

<sup>33</sup> Freedom of navigation and overflight is the international rights to navigate on and fly over international waters.

<sup>34</sup> The Charter of the United Nations recognizes that all nations enjoy an inherent right of individual and collective self-defense against armed attack.

<sup>35</sup> Under international law, vessels engaged in universal crimes such as piracy, transport of slaves, and unauthorized broadcasting may be subject to the jurisdiction of any nation.

The National Strategy for Maritime Security categorizes maritime threats as follows: 1) nation-state threats; 2) terrorist threats; 3) transnational criminal and piracy threats; 4) environmental destruction; and 5) illegal seaborne immigration.

First, a nation-state threat to the maritime domain can occur by inter-state conflict or actions by an individual state.<sup>36</sup> Individual states may not be directly involved in challenging security in the maritime environment, but may provide a safe haven for groups with intentions of inflicting harm on the United States. Another significant threat that a nation-state can pose is the transfer of critical weapons systems, technology, or weapons of mass destruction to a rogue state or a terrorist organization.<sup>37</sup>

Second, the maritime domain faces a myriad of possible non-state terrorist threats from vessels, people, and cargo that moves through it. As illustrated in the excerpt above from the National Strategy for Maritime Security, there is a litany of possible means and methods that terrorist organizations can use to attack and exploit the maritime domain. Terrorist organizations are focused on exploiting the openness and dependence of the United States on the free flow of commerce with the objective of causing significant disruptions to the United States economy, destruction to its critical infrastructure, and inflicting mass casualties. United States ports provide an attractive target for terrorist organizations because they are international boundaries, include critical infrastructure, and in many cases are located near high-density population centers. Terrorist organizations also use the maritime domain to transport their operatives,

---

<sup>36</sup> National Strategy for Maritime Security, The White House, at 3 (March 2005).

<sup>37</sup> *Id.* at 4.

generate revenue to support and advance their cause, and to provide logistical support for their operations.<sup>38</sup>

Third, transnational criminal organizations seek to exploit the openness and efficiencies of the maritime domain to transport their illegal wares. Specifically, they use the maritime environment to smuggle people, drugs, weapons, and other contraband. Today's criminal organizations are well organized, funded, and sophisticated. For example, maritime drug trafficking is a major source of revenue for international criminal organizations and terrorist organizations.<sup>39</sup> Piracy and acts of violence against vessels is also a threat to global maritime security. Piracy disrupts maritime shipping activities, and results in significant economic and human costs. The attack on the motor vessel MAERSK ALABAMA in April 2010 by Somali pirates focused the attention of the international community on this maritime security issue. I will discuss the case of the motor vessel MAERSK ALABAMA in Chapter 4.

Fourth, environmental destruction is another threat to maritime security. It includes intentional acts by State or non-State actors that cause environmental disasters. For example, oil and chemical spills, and other similar disasters can impact both the economic health of a country, and the political stability of a region.<sup>40</sup> Also included in this category of threats are conflicts that result between nations from diminishing natural resources. For example, many maritime nations, including the United States have used their maritime forces to take aggressive action to prevent foreign commercial fishing vessels from illegally fishing in their exclusive economic zone. The protection and preservation of the United States ecosystems is vital to its economy and health. If

---

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 5.

<sup>40</sup> *Id.*

the United States is to enjoy a rich, diverse, and sustainable ocean environment, then U.S. Government agencies must assist in halting the degradation of its ocean's natural resources.

Lastly, the maritime domain is also used to illegally transport migrants, and consequently presents a major challenge to the stability of a number of regions throughout the world. This has been a persistent threat, and will remain as migrants leave their home country for either political or economic reasons. This trend will continue to put a strain on the taxpayers and social services of countries where migrants relocate. Mass migrations also present a significant threat in the maritime domain, and countries must be prepared to deter and respond to this type of incident. Political, economic, and social unrest prompted mass migrations to the United States from Haiti, Cuba, and the Dominican Republic during the 1990s. The humanitarian and enforcement efforts required to respond to a mass migration require the coordination and cooperation of federal, state, local entities, and the private sector. In addition, terrorist organizations use human smuggling as a source of revenue, and also to circumvent U.S. border enforcement to bring operatives into the United States.<sup>41</sup>

The U.S. federal government has a responsibility to secure the maritime domain in order to protect its citizens. This means "exerting and safeguarding sovereignty in the nation's internal waters, ports, waterways and littorals, as well as protecting vital national interests on the high seas."<sup>42</sup> The bottom line, the United States must deploy the full range of its operational assets and capabilities to prevent the maritime domain from being used by terrorists, criminals, and hostile States to commit acts of terrorism or other unlawful or hostile acts against the United States.

---

<sup>41</sup> *Id.* at 6.

<sup>42</sup> Border Security: Hearing Before Subcomm. on Border, Maritime, and Global Counterterrorism, U.S. House of Representatives, 110th Cong. (February 13, 2007) (statement of Rear Admiral David P. Pekoske, Assistant Commandant for Operations, U.S. Coast Guard).

### ***Maritime Security Capabilities***

The U.S. Government possesses an unprecedented level of operational capabilities to combat maritime terrorist threats and protect the homeland. For purposes of this thesis I will focus on specialized teams that the U.S. Coast Guard, U.S. Customs Border Protection, Federal Bureau of Investigation, and U.S. Navy have to combat maritime terrorism. In most cases, due to the operational capabilities that the forces of these agencies possess, they will either be a first responder to a terrorist incident or the forces that the interagency will select when developing a course of action through the MOTR Plan. Due to the classification level of this thesis this is not an inclusive and detailed list of the capabilities that each of the agencies have in their inventory. The purpose of this section is to give the reader that is not familiar with maritime security operations a basic understanding of the range of capabilities that the U.S. Government has available to respond to threats in the maritime domain.

#### ***Department of Homeland Security (U.S. Coast Guard and Customs Border Protection)***

The U.S. Coast Guard under the Department of Homeland Security is one of the five Armed Forces of the United States and a multi-mission maritime service.<sup>43</sup> The U.S Coast Guard is a relatively small organization for the breadth of its responsibility with approximately 42,000 active duty personnel, 8,100 reservists, and more than 7,000 civilian employees.<sup>44</sup> It has an extensive and diverse inventory of surface assets ranging from small boats to deepwater icebreakers and other cutters, maritime patrol aircraft, and command-and-control systems. Specifically, the Coast Guard has more than 200 aircraft and more than 1,600 vessels of all

---

<sup>43</sup> U.S. Coast Guard Pub. 1, *U.S. Coast Guard: America's Maritime Guardian*, 64-69 (May 2009).

<sup>44</sup> *Id.* at 18.

types.<sup>45</sup> Coast Guard missions fall into five core roles: Maritime Security, Maritime Safety, Protection of Natural Resources, Maritime Mobility, and National Defense.<sup>46</sup>

After the September 11, 2001 terrorist attacks, the Coast Guard created 12 Maritime Safety and Security Teams (MSSTs) and one Maritime Security Response Team (MSRT) under the Maritime Transportation Safety Act of 2002.<sup>47</sup> The teams were strategically assigned throughout the United States in order to cover all major ports. These teams were designed to offer operational commanders a quick response capability that could be deployed nationwide to thwart a terrorist attack in the nation's harbors, ports, and internal waterways. These units are multi-mission in nature and are also trained to enforce moving and fixed security zones to protect commercial high interest vessels, U.S. Navy high value assets, and critical waterside infrastructure.<sup>48</sup> Additionally, MSSTs possess specialized skills and capabilities that enable them to deter or respond to a terrorist threat including high speed boat training, advanced weapons handling, and canine teams.<sup>49</sup> Each MSST is comprised of approximately 100 Coast Guard members.<sup>50</sup> MSST's deploy on board Coast Guard cutters to conduct drug and migrant interdiction operations. In addition, they support Coast Guard Sector Commanders and Captains of the Port by conducting port safety and security operations, and performing other maritime homeland security missions.

In addition to the MSSTs, the Coast Guard created one Maritime Security Response Team (MSRT), which is a highly specialized unit with advanced counterterrorism skills and tactics. The MSRT is trained to be a first responder to: potential terrorist situations; deny

---

<sup>45</sup> U.S. Coast Guard, <http://www.uscg.mil/datasheet/> (last visited April 6, 2010).

<sup>46</sup> U.S. Coast Guard, <http://www.uscg.mil/top/missions/> (last visited April 6, 2010).

<sup>47</sup> Maritime Strategy for Homeland Security, U.S. Coast Guard, 32-33 (December 2002).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

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

terrorist acts; and perform security actions against non-compliant persons and vessels.<sup>51</sup> The MSRT's special capabilities include: waterside security; tactical maritime law enforcement/force protection; airborne use of force (AUF); canine explosive detection teams; and response to chemical, biological, radiological, nuclear, and high yield explosives (CBRNE) incidents.<sup>52</sup> The MSRT is also trained in advanced close quarters combat tactics. Similar to the FBI's Hostage Rescue Team, the MSRT is fully trained and qualified in fast roping.<sup>53</sup> The MSRT is comprised of approximately 220 Coast Guard personnel.<sup>54</sup>

In addition to the MSSTs and MSRT almost all Coast Guard cutters and small boat stations have law enforcement teams that are capable of conducting boardings of vessels to enforce federal laws and regulations. Due to the multi-mission nature of the Coast Guard, the Coast Guard has multi-tiered capabilities where some units and personnel are more specialized at anti-terrorism and force protection missions than others. For instance, Coast Guard personnel at an MSST train and conduct law enforcement operations daily, while personnel at a small boat station conduct law enforcement operations as well as other Coast Guard missions. In fiscal year 2009, the Coast Guard conducted 68,950 boardings<sup>55</sup>, seized 352,862 pounds of cocaine and 71,234 pounds of marijuana, and interdicted 3,467 undocumented migrants.<sup>56</sup>

The United States Customs and Border Protection Office of Air and Marine (CBP OAM) under the Department of Homeland Security is a federal law enforcement agency within the Department of Homeland Security. The mission of the CBP OAM is to "protect the American people and Nation's critical infrastructure through the coordinated use of integrated air and

---

<sup>51</sup> U.S. Coast Guard, <http://www.uscg.mil/hq/cg5/cg532/pwcs.asp> (last visited April 6, 2010).

<sup>52</sup> U.S. Coast Guard, Office of Counterterrorism and Defense Operations, Washington, DC.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Includes recreational, living marine resource, and security boardings.

<sup>56</sup> U.S. Coast Guard Fiscal-Year 2009 Performance Report, U.S. Coast Guard (February 2010).

marine forces to detect, interdict, and prevent acts of terrorism and the unlawful movement of people, illegal drugs and other contraband toward or across the borders of the United States.”<sup>57</sup>

The CPB OAM has more than 900 Federal Agents that operate in 79 locations.<sup>58</sup> The CPB OAM personnel are trained and authorized to conduct boardings to enforce U.S. laws and regulations. In addition, to conduct their mission, CBP OAM has more than 290 aircraft and approximately 200 vessels.<sup>59</sup> These vessels and aircraft are stationed at strategic locations along the United States border and coastlines.

In fiscal year 2009, CBP OAM law enforcement operations resulted in the seizure of 167,048 pounds of cocaine and 1,298,393 pounds of marijuana.<sup>60</sup> In addition these operations assisted in the arrest of 1,613 narcotics smugglers and 59,965 illegal aliens.<sup>61</sup>

#### ***Department of Justice (Federal Bureau of Investigation)***

The Federal Bureau of Investigation (FBI) is the principal investigative arm of the United States Department of Justice.<sup>62</sup> The FBI has approximately 33,600 employees, including 13,400 special agents and 20,200 professional staff.<sup>63</sup> The mission of the FBI is “to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners.”<sup>64</sup> The FBI has three types of teams to deter and respond to terrorist threats in the maritime domain: Special Weapons and Tactics (SWAT) team; Hostage Rescue Team (HRT); and Hazardous Devices Response Unit (HDRU).

---

<sup>57</sup> U.S. Customs and Border Protection Office of Air and Marine, [www.cbp.gov/xp/cgov/border\\_security/air\\_marine/cbp\\_air\\_marine\\_overview.xml](http://www.cbp.gov/xp/cgov/border_security/air_marine/cbp_air_marine_overview.xml) (last visited April 6, 2010).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Federal Bureau of Investigations, FBI <http://www.fbi.gov/aboutus/faqs/faqsone.htm> (last visited April 6, 2010).

<sup>63</sup> Federal Bureau of Investigations, <http://www.fbi.gov/quickfacts.htm> (last visited April 6, 2010).

<sup>64</sup> *Id.*

All of the FBI's 56 field offices, which are located throughout the United States, have SWAT teams. These teams receive basic training in areas useful for operating in the maritime environment including water safety, limited climbing techniques, and close quarters battle tactics.<sup>65</sup> Most FBI SWAT teams do not possess the skills and equipment needed to conduct a boarding<sup>66</sup> of a vessel. For example, most SWAT teams do not have boats to deliver their law enforcement teams, which require them to rely on other agencies like the Coast Guard to transport their units to an operational target.<sup>67</sup>

In September 2005, to increase their maritime capability, the FBI created 14 enhanced maritime SWAT teams that they located near the Coast Guard's 12 Maritime Safety and Security Teams (MSST).<sup>68</sup> The locations of the SWAT units were selected with the purpose of improving cooperation between the two agencies, and these specialized units. These units might be the first specialized anti-terrorism capability to an incident since they are located throughout the United States. For example, the Special Agent in charge of the field office when notified of a maritime incident would deploy a SWAT team to respond to the threat. Once on scene the SWAT team would assess whether they have the capability to address the threat or request additional support. To date, these units have mainly been used in exercises and have not responded to an actual incident. All of the SWAT teams have limited maritime capability relative to the HRTs.

The HRT is the FBI's most capable and equipped counterterrorism team.<sup>69</sup> The HRT was created in 1982 and is trained "to rescue U.S. citizens or others who may be held illegally by a

---

<sup>65</sup> U.S. DEPARTMENT OF JUSTICE, OFFICE OF INSPECTOR GENERAL, AUDIT REPORT 06-26 (March 2006).

<sup>66</sup> A maritime law enforcement boarding is any armed intervention aboard a vessel to detect and/or suppress any violation of applicable law. U.S. COAST GUARD MARITIME LAW ENFORCEMENT MANUAL, 3-3 (2007).

<sup>67</sup> U.S. DEPARTMENT OF JUSTICE, OFFICE OF INSPECTOR GENERAL, AUDIT REPORT 06-26 (March 2006).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

hostile force, either terrorist or criminal.”<sup>70</sup> HRT members are trained in tactics and techniques that are developed to specifically respond to a terrorist incident in the maritime domain. However, since its establishment, the HRT has never been called on to respond to a real maritime incident.<sup>71</sup> HRT officials claim that their team’s ability to respond to a maritime terrorist incident is “unparalleled in the federal law enforcement community because it trains nearly continuously with helicopter-based assaults in a variety of environments, including low light, no light, and onto oil rigs.”<sup>72</sup> One of distinguishing capabilities of the HRT is its ability to “fast rope,” a technique where the team rappels from a helicopter to board a maritime target.<sup>73</sup> This technique enables the FBI to rapidly place a team aboard either a stationary or moving vessel, and in sea conditions that would prohibit a boat-to-boat transfer of responders. In addition to fast roping, the HRT possesses advanced maritime enforcement capabilities, including advanced “breaching” capabilities,<sup>74</sup> non-compliant boardings<sup>75</sup>, subsurface diving, closed circuit diving (scuba gear that does not emit bubbles), and combat swimming.<sup>76</sup>

The FBI’s Hazardous Devices Response Unit (HDRU) is responsible for responding to incidents involving weapons of mass destruction (WMD), including incidents that occur on board ships and in ports.<sup>77</sup> The mission of the HDRU is to “provide technical response teams to find the WMD device, gain access to the device, and diffuse it.”<sup>78</sup> The HDRU is not usually a first responder unit, unless the operation is intelligence driven. The HDRU is normally contacted when the incident exceeds the capability of the on scene unit. Typically, inspectors from the

---

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> Breaching is the ability to circumvent locked doors aboard a ship. *Id.*

<sup>75</sup> A non-complaint vessel boarding is a vessel that fails to heave to for a boarding or comply with other lawful orders. U.S. COAST GUARD MARITIME LAW ENFORCEMENT MANUAL, 3-7 (2007).

<sup>76</sup> U.S. DEPARTMENT OF JUSTICE, OFFICE OF INSPECTOR GENERAL, AUDIT REPORT 06-26 (March 2006).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

U.S. Customs and Border Protection are the first to encounter cargo that may include WMD.<sup>79</sup> The most common terrorism-related suspicious incident experienced is when a radiation sensor alarm goes off when inspecting containers in a seaport or onboard a vessel.<sup>80</sup>

For example, in September 2002, the HDRU was called upon to assist with other federal agencies in response to radiation being detected onboard the container ship PALERMO SENATOR. As a precautionary measure and to assess the potential threat, the Coast Guard diverted the PALERMO SENATOR to Elizabeth, New Jersey. Federal, state, and local stakeholders responded to the incident, including: the Coast Guard; the Port Authority of New York and New Jersey; the Department of Energy; and the FBI's Newark field office. The interagency requested that the HDRU search the ship and identify the source of the radiation. Once aboard the PALERMO SENATOR, the HDRU team discovered the complexity of searching a vessel with 1,200 shipping containers stacked one on top of another, both above and below deck. It took the HDRU team a full day to complete the search and they did not locate the source of the radiation that was initially detected.<sup>81</sup>

#### *Department of Defense (U.S. Navy)*

The United States Navy is an Armed Force of the United States with the mission of the “maintain[ing], train[ing] and equip[ing] combat-ready Naval forces capable of winning wars, deterring aggression and maintaining freedom of the seas.”<sup>82</sup> The U.S. Navy has 331,682 active duty personnel and 124,000 reservists.<sup>83</sup> It operates nearly 300 ships and more than 3,700 aircraft.<sup>84</sup> The Navy has two types of teams available to respond to a threat in the maritime

---

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> U.S. Navy, [www.navy.mil/navydata/organization/org-top.asp](http://www.navy.mil/navydata/organization/org-top.asp) (last visited April 6, 2010).

<sup>83</sup> U.S. Navy, <http://www.navy.mil/navydata/faq.asp> (last visited March 31, 2010).

<sup>84</sup> *Id.*

domain – Visit, Board, Search, and Seizure (VBSS) teams and Sea, Air, and Land (SEAL) teams.

Navy VBSS teams are usually deployed aboard Navy frigates and guided missile destroyers that conduct operations to counter drug and arms trafficking, piracy, and terrorism. These teams are trained in basic maritime boarding skills, including non-lethal weapons (pepper spray), defensive tactics, and search and seizure.<sup>85</sup> The size of a VBSS team depends on the size of the vessel and threat level anticipated. Typical, VBSS teams range in size from six to fourteen members. According to Kurt Martin, Antiterrorism Program Manager for the Center for Security Forces (CENSECFOR)<sup>86</sup>, “VBSS teams are on Navy ships throughout the world 24/7, keeping the bad guys from smuggling everything from guns to cocaine.”<sup>87</sup>

Navy SEAL teams are the U.S. Government’s most capable counterterrorism units. Naval Special Warfare Command (NSW) administers the SEAL program. There are approximately 5,400 total active-duty personnel at NSW including 2,450 SEALs and 600 Special Warfare Combatant-craft Crewmen (SWCC).<sup>88</sup> Additionally, NSW also has at its disposal a 1,200-person reserve of approximately 325 SEALs, 125 SWCC and 775 support personnel.<sup>89</sup>

Navy SEALs are maritime, multi-purpose combat forces trained, equipped, and organized to conduct a range of special missions in all operational environments and threat conditions.<sup>90</sup> These teams operate in small numbers and conduct clandestine, high-risk missions

---

<sup>85</sup> Ed Barker, VBSS: Evolving with the Mission, Naval Education and Training Command (April 25, 2009)

<sup>86</sup> CENSECFOR is located in Norfolk, Virginia and provides formal VBSS training to Navy personnel. The Center was created following the Gulf War in 1990 as a way to standardize and continue the Maritime Interception Operations introduced there as a result of UN resolutions. *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> U.S. Navy, <http://www.seal.navy.mil/seal/introduction.aspx> (last visited April 18, 2010).

<sup>89</sup> *Id.*

<sup>90</sup> U.S. Navy, <http://www.sealchallenge.navy.mil/seal/missions.aspx> (last visited April 7, 2010).

and provide unlimited options to senior decision makers.<sup>91</sup> SEAL team mission areas include: special reconnaissance; unconventional warfare; combating terrorism; foreign internal defense information warfare; security assistance; personnel recovery; and counter drug operations.<sup>92</sup>

***Department of State (U.S. Embassies)***

Although not a capability, it is important to note the critical role that the Department of State and U.S. Embassies throughout the world play in facilitating the U.S. Government's response to a maritime threat. As noted earlier in this chapter, the legal framework that governs the Law of the Sea is complex. At times, U.S. actions taken against a foreign-flagged vessel usually requires the consent and coordination of the flag State or coastal State, depending on the location of the vessel. For example, if a Coast Guard cutter on patrol in the Eastern Pacific encounters a foreign-flagged vessel suspected of being engaged in drug trafficking, the Coast Guard cannot board the vessel without the permission of the flag State. This is true even if, in plain view there is a multi-ton load of cocaine onboard the vessel. In this example, if the Coast Guard does not have a bilateral counterdrug maritime agreement<sup>93</sup> with the flag State of the vessel, the Coast Guard through the Department of State and the Embassy in the country of the flag State of the vessel would request permission to stop, board, and search the vessel.

In addition to facilitating and coordinating the U.S. Government's maritime response with international partners, the Department of State also ensures that any proposed course of action does not adversely impact the foreign affairs of the United States. The Embassy will be able to alert the maritime security agencies responding to the threat of the political climate in the

---

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> A bilateral maritime counter-drug agreement is an agreement between the United States and a foreign country that serves as a tool in fighting drug trafficking. The agreement usually consists of six parts and grants the United States full or partial permission for shipboarding, shiprider, pursuit, entry to investigate, overflight, and order to land. The U.S. Government currently has 24 bilateral maritime counter-drug agreements. U.S. Department of State, <http://www.state.gov/s/l/2005/87199.htm> (last visited April 6, 2010).

country that could impact the U.S. Government's request or bilateral relations. The Department of State will also be able to inform the agencies involved in the response of other areas of U.S. bilateral relations that need to be taken into consideration when developing a course of action. The U.S. Embassy teams are also able to provide logistical support for maritime operations, including: transferring prisoners and evidence, spare parts and fuel.

### ***Employment of Maritime Security Capabilities***

The inventory of capabilities outlined above not only demonstrates the breadth of United States maritime security capabilities, but also reveals a level of redundancy. Although some level of redundancy is necessary to ensure availability of a response capability it also at times creates competition between agencies, and consequently impacts the decision regarding which agency's capabilities should be used to respond to a particular threat. For example, on occasion, agencies with similar capabilities advocate to the other agencies on the MOTR conference call that their unit is better suited than that of another agency to respond to a particular threat. This interagency rivalry is even more evident during the federal budget process. It is worth noting that the decision making process of which security response capability to employ takes place among the agencies represented on the MOTR conference call, and that no one agency has formal authority over another.

As I will discuss in Chapter 4, the MOTR Plan provides a framework to productively channel the discussion on capability employment. Specifically, the MOTR Plan provides a process that fosters deliberate coordination among the relevant agencies to develop optimal responses to maritime threats with the objective of achieving a desired national-level outcome. Before the MOTR Plan, this was an ad-hoc process, and in most cases only included a select number of agencies in the decision making process. Consequently, the full capabilities and competencies of the U.S. Government were underutilized.

There are two types of maritime threat response cases – planned and unplanned. Planned responses originate as a result of actionable intelligence. A planned response provides time for the various U.S. Government agencies that have a stake in the maritime threat response to deliberate and select the appropriate mix of resources to achieve the desired outcome in response to a particular threat. The type of capability employed is based on the level of the threat and the desired outcome. For example, the maritime security capability provided by the Navy SEALs, the FBI’s HRT, or the Coast Guard’s MSRT would be considered by the various agencies represented on the MOTR conference call for use in response to a high-end threat like an armed terrorist on a vessel that is expected to be non-compliant. These forces are the most capable, and are not frequently employed unless the threat warrants such expertise.

A further consideration in selecting the appropriate capability to employ is the desired outcome. If the desired outcome in the example given above is to bring the terrorists to the United States for criminal prosecution then the Coast Guard’s MSRT or FBI’s HRT would likely be chosen by the agency representatives on the MOTR conference call since both of these agencies have law enforcement authority. Posse Comitatus<sup>94</sup> prohibits the U.S. Navy and other Armed Forces of the United States from engaging in law enforcement activity, therefore in this example, a SEAL team would not likely be utilized.<sup>95</sup>

To respond to a lower-end threat, the agency participants on the MOTR conference call would likely decide to use a Coast Guard boarding team, MSST or Navy VBSS team. It is easier to decide what capability to employ at the extreme ends of the threat spectrum, but when the

---

<sup>94</sup> The Posse Comitatus Act prohibits use of Army and Air Force personnel to execute civil laws of the United States, “except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.” Violation of the Act carries with it criminal liability (felony) with the possibility of a fine and imprisonment. The primary prohibition of the Act is against direct military involvement in law enforcement activities. 18 U.S. Code § 1385.

<sup>95</sup> The prohibition is statutory for the Army and Air Force (Act of June 18, 1878, ch. 263, § 15, 20 Stat. L. 145, 152; codified at 18 U.S. Code § 1385) and it is a matter of Secretary of Defense policy for the Navy and Marine Corps (See Department of Defense Directive 5525.5). It does not apply to the Coast Guard.

threat is somewhere in the middle it can become more difficult.

Another dynamic that influences the decision making process of selecting the appropriate operational unit is an agency's concern that the competency of their unit will atrophy. Since planned cases occur infrequently, approximately four to five a year, some agencies, concerned about atrophy will advocate to the agency representatives on the MOTR conference call the use of one of their teams. This concern is usually never explicitly expressed, but is an underlying force that may influence the discussion by the agency representatives on selecting the appropriate response capability. This concern is also closely related to the competition for federal funding since a capability that is not frequently employed and seen as redundant is susceptible to receiving less funding, or even worse, being eliminated. The MOTR Plan and Protocols provide a framework to have this discussion in a deliberate and thoughtful manner. This discussion is conducted during a conference call with relevant agency representatives. It is also not uncommon to use more than one agency's capabilities to respond to a threat. For example, in some cases the U.S. boarding team consists of members of the Coast Guard, Customs and Border Protection, and FBI.

Unplanned threat response cases result during normal operations. For example, a Coast Guard cutter or a Customs Border Protection Air and Marine unit while on patrol in the Florida Straits could encounter a suspicious "go-fast" vessel that appears to be engaged in human trafficking. This type of case results in the on-scene operational unit taking initial action and then reporting to the relevant agencies through the MOTR process. The U.S. Coast Guard because of the number of vessels that it routinely has patrolling in United States ports, waterways, and international waters typically is the first agency to encounter a threat in these situations. Before the MOTR Plan, many of these cases were handled by the unit that came upon the threat without any awareness or use of other agency capabilities and competencies.

Unfortunately, not having a process in place to handle these situations resulted in a less than optimum result. In Chapter 3, I provide several examples to illustrate this point. Additionally, the failure of the responding agency to communicate to other relevant maritime security agencies resulted in a lack of awareness of information and actions that impact their operations. As I will discuss in Chapter 4, the MOTR Plan addresses this situation by defining the types of threats that require the relevant agencies be notified and provides a framework to facilitate communication and coordination amongst the agencies that did not previously exist.

## CHAPTER

# 3

### Origins of the MOTR Plan

---

Prior to the implementation of the MOTR Plan, there existed no Executive branch mandate for integrated coordination at the national level among federal agencies responding to threats in the maritime domain. The process that was used prior to the MOTR Plan was Presidential Directive/PD-27. Presidential Directive/PD-27 was issued as a result of an international incident that occurred off Cape Cod, Massachusetts on November 23, 1970, between a Coast Guard Cutter and a Soviet fishing vessel. The facts of the case below demonstrate the consequence of the U.S. Government not having an interagency process to coordinate responses to maritime cases. Consequently, the Coast Guard and Department of State failed to effectively communicate, did not properly coordinate, and never defined a desired national outcome, all of which resulted in an international incident that could have been avoided.

#### *Simas Kudirka Case*<sup>96</sup>

The Coast Guard Cutter VIGILANT had rendezvous with the Soviet Fishing Vessel Mother ship SOVETSKAYA LITVA in United States waters to discuss North Atlantic fishing rights. During the meeting, a crewman from the Soviet vessel, Simonas "Simas" Kudirka, a Soviet seaman of Lithuanian nationality jumped from the SOVETSKAYA LITVA onto the Coast Guard cutter and requested to defect. The commanding officer of VIGILANT sought the guidance of the First Coast Guard District Commander in Boston, Massachusetts and the

---

<sup>96</sup> Refugees: How Simas Was Returned, Time (December 28, 1970) and Interview with Wayne Raabe, Principal Deputy Chief of the Narcotic and Dangerous Drug Section at the Department of Justice, in Washington, DC (February 19, 2010).

Department of State in Washington, DC. After several hours of deliberations and when attempts to get guidance from State Department failed, the First District Commander refused the asylum request and ordered the commanding officer of the VIGILANT to permit crewmembers from the Soviet ship to board the VIGILANT and remove Kudirka. He was chased and beaten badly before being returned to the Soviet ship. The Coast Guard's small boat was even used to transport Kudirka back to the SOVETSKAYA LITVA. Later, Kudirka was tried for treason by the Soviet Union and sentenced to ten years in the Gulag. A subsequent investigation revealed that Kudirka could claim U.S. citizenship through his mother. He was allowed to come to the United States in 1974.

The Kudirka case was an embarrassment for the U.S. Government. As noted, there were a number of failures in communication and coordination that led to this disastrous outcome. The root cause of failure in this case was that there was no interagency coordination or information sharing process in place to respond to this incident. Nor was it apparently clear who should/could decide what to do. The Coast Guard made the right decision by contacting the Department of State regarding the asylum request by Kudirka. The commanding officer of VIGILANT and the First District Commander likely recognized the potential impact that the decision on the asylum request could have on U.S.-Soviet Union bilateral relations. However, there was no policy or process that required the Coast Guard to inform State Department in this case. The Coast Guard did make a grievous error by returning Kudirka to the SOVETSKAYA LITVA and refusing his asylum request without the concurrence of State Department. The decision to refuse an asylum request did not vest with the Coast Guard's District Commander.

As the Kudirka case illustrates, prior to the PD-27 process, maritime incidents were handled in an ad hoc manner. In planned and intelligence driven cases, the agency that had the information in a particular case would decide whether it needed to contact other federal agencies.

There was no interagency guidance or rules on when to notify other agencies or whether to include them in the operational planning process. For maritime incidents that occurred during normal operations, when an agency encountered a situation that implicated the interests of another agency, or exceeded their capabilities, the decision on whether to share the information or request assistance vested with the responding agency. In many cases, agencies took unilateral action since there was no guidance on when coordination of operations or sharing of information was required.

***Presidential Directive/PD-27***

As a result of the Kudirka case, Presidential Directive/PD- 27 was issued in 1978. This directive provided a limited set of procedures to “deal with various types of non-military incidents that could have an adverse impact upon the conduct of U.S. foreign relations.”<sup>97</sup>

Unlike the MOTR Plan, the directive was a mere 3-pages long and did not include a requirement to develop implementation plans or protocols. Specifically, PD-27 required that:

1) Agencies maintain a 24-hour watch center;<sup>98</sup>

2) Agency watch centers report to the State Department Operations Center “incidents that are developing in a way that could impact adversely upon the conduct of U.S. foreign relations.”;<sup>99</sup>

3) Agency watch centers report to State Department Operations Center on “actions already taken or under way by law enforcement agencies...that could impact adversely upon the conduct of U.S. foreign relations.”;<sup>100</sup>

---

<sup>97</sup> Presidential Directive 27: *Procedures for Dealing with Non-Military Incidents*, The White House (January 19, 1978).

<sup>98</sup> *Id.* at 2.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

4) State Department Operations Center “promptly inform appropriate officers of Department of State and other Agencies concerned and the White House Situation Room of such incidents.”<sup>101</sup> “Incidents” referring to items 1 and 2 above; and

5) “Disagreements” between relevant agencies during the PD-27 process call are referred to the White House for final decision.<sup>102</sup>

One of the primary objectives of the PD-27 Process was to “ensure that the government’s decisions [were] reached expeditiously and that views of all concerned Departments and Agencies, as well as considerations of both domestic law and foreign policy, [were] brought together in making a decision.”<sup>103</sup> As noted, the PD-27 Process required an Agency responding to a maritime incident to consider whether the incident, or the responding agency’s action could have an adverse impact on U.S. foreign relations. If the responding agency determined that such an impact was possible, the responding agency was required to notify relevant agencies through the Department of State and get interagency approval on its proposed course of action. For example, if a Coast Guard cutter while patrolling in the U.S. exclusive economic zone off the coast of Alaska spotted a Chinese flagged fishing vessel engaged in fishing, the Coast Guard would contact and inform the relevant agencies through State Department. Specifically, before taking action, the Coast Guard would request a PD-27 conference call with relevant agencies to brief the case and provide a proposed course of action. The Coast Guard would likely request to stop, board, and search the vessel. If the vessel was determined to be engaged in fishing in the U.S. exclusive economic zone, the Coast Guard with the concurrence of the Departments of State and Justice, and NOAA would decide whether to seize the vessel and product on board. The

---

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

agencies involved the PD-27 conference call would also coordinate diplomatic, legal, and logistic issues.

Although the PD-27 Process was fairly successful in handling many cases, its intended application was not clearly defined and its scope of interagency involvement too narrow. For example, the PD-27 did not clearly define what incidents qualified as having an “adverse impact upon the conduct of U.S. foreign relations.” In addition, the PD-27 Process only included a limited number of federal agencies including: the Department of State; Department of Justice; National Oceanic and Atmospheric Administration (NOAA); and U.S. Coast Guard. These agencies regularly employed the PD-27 Process for drug, migrant, and fisheries interdiction cases on the high seas. However, many other Departments and agencies had no visibility in the process and there were no comparable procedures for domestic maritime events.

As a result of PD-27 there was a proliferation of national-level Federal operations centers. Each agency created its own operations center. By the time the MOTR Plan was developed, there were at least 15 national-level Federal operations centers that were involved in monitoring and planning maritime operational threat response.<sup>104</sup> But the work of these centers was not integrated and some of the centers were unaware of each other’s existence.

Globalization is creating an interdependent and more complex world and the changes flowing from globalization are having a significant impact on how governments protect and preserve the security of the maritime domain. The shortcomings identified above in the PD-27 Process, the impact of globalization, and the new threats and challenges in a post 9/11 environment created a critical need for a new framework to address maritime threats.

Additionally, there are a number of cases that occurred prior to the approval of the MOTR Plan

---

<sup>104</sup> Interview with Wayne Raabe, Principal Deputy Chief of the Narcotic and Dangerous Drug Section at the Department of Justice, in Washington, DC (February 19, 2010).

that highlighted this need and created momentum for the approval of the MOTR Plan. One example that illustrates the consequences of a failure to coordinate interagency actions and define desired outcomes at the outset is a piracy case that occurred off the Horn of Africa in 2005.

*Example of a Pre-MOTR Case*

In 2005, the Commander of a U.S. Navy warship responded to a potential piracy incident aboard a South Asian flagged merchant vessel just outside Somali territorial seas off the Horn of Africa. The warship responded to the threat and rescued the merchant vessel. Without reporting the incident to the interagency and without developing a desired outcome for the case, the warship captured the suspected pirates and brought them aboard their vessel. The rescued merchant vessel, with its crew and cargo safe, continued on its voyage. However, the U.S. Navy warship was unable to develop an expeditious course of action for what to do with the captured pirates. Issues of jurisdiction, prosecution, and transportation resulted in the warship having to adjust its operational schedule as the suspected pirates remained onboard for more than 30 days until their disposition could be resolved.<sup>105</sup>

The MOTR Plan, which is focused on achieving a coordinated, timely and effective planning and mission accomplishment would have addressed many of the unresolved issues identified above in advance. Additionally, it would have enabled the U.S. Navy to take advantage of the resources of the U.S. Government to effectively respond to this particular case. First, the MOTR Plan would have required the U.S. Navy to report the incident to the relevant agencies through a MOTR conference call. Consequently, this would have provided awareness to the relevant maritime security agencies, enabled these agencies to mobilize forces in the

---

<sup>105</sup> Interview with Commander Andrew Kuepper, U.S. Navy (retired), Director, Homeland Defense Strategy and Implementation at the Department of Defense, in Washington, DC (February 18, 2010).

region, and informed the U.S. Navy on the assistance that they could provide. The MOTR Plan requires an interagency conference call, where not only information is shared, but a desired national outcome is defined. For example, the U.S. Navy would have discussed issues of jurisdiction and prosecution with the Departments of State and Justice. In particular, the interagency would have decided whether the pirates would be brought to the U.S. for criminal prosecution or turned over to a country in the region that was interested in taking possession and prosecuting the pirates. Moreover, transportation and logistics issues could have been facilitated. Although this particular piracy incident did not pose a direct threat to the United States, the lack of an appropriate maritime coordination mechanism impacted the U.S. Navy's ability to operate and respond to other threats.<sup>106</sup>

*Impetus for MOTR Plan (National Strategy for Maritime Security & NSPD 41/HSPD 13)*

**Nations have common interest in achieving two complementary objectives: to facilitate the vibrant maritime commerce that underpins economic security, and to protect against ocean-related terrorist, hostile, criminal and dangerous acts, including piracy. To accomplish this objective requires a “whole-of-government” approach that integrates military, law enforcement, judicial, diplomatic, and commercial interests.**

**Admiral Thad Allen, Commandant United States Coast Guard  
(April 20, 2009)**

In the aftermath of the September 11, 2001 terrorist attacks, there were a number of efforts taken by the U.S. Government to bolster the security of the United States including the development of new agencies, legal authorities, directives, policies, and strategies. For example, on April 25, 2002, President Bush approved the Defense Department Unified Command Plan, which established the U.S. Northern Command (NORTHCOM). NORTHCOM began operations in October 2002 to provide command and control of Department of Defense

---

<sup>106</sup> *Id.*

homeland defense efforts and to coordinate defense support of civil authorities. The creation of NORTHCOM was significant in that it was the first Combatant Command with exclusive geographic and operational responsibility in the domestic United States in the fifty-year history of the Unified Command Plan.<sup>107</sup> Later that year, in November 2002, the Department of Homeland Security was created with the purpose of “helping to prevent, protect against, and respond to acts of terrorism on our soil.”<sup>108</sup> The creation of these two entities led to overlapping roles and responsibilities between the newly created Department of Homeland Security and the Department of Defense. The initial version of the Department of Defense Homeland Security Joint Operating Concept labeled this area of overlap the “seam of uncertainty,” where no one organization could easily be identified as having lead responsibilities over the other agencies across the range of response actions.<sup>109</sup>

The lack of clarity of the roles and responsibilities for these newly created agencies resulted in lively debate and confusion. Attempting to alleviate the confusion, the agencies created terms of reference regarding roles and responsibilities. The Department of Defense argued that NORTHCOM should have the lead for Maritime *Homeland Defense* operations while the Department of Homeland Security advocated that it should have the lead for maritime *Homeland Security* operations. Unfortunately, these terms of reference created more confusion than clarity because the possible threat scenarios did not fit into a clear category.

For example, if the U.S. Government had intelligence information that a container vessel bound for the United States had terrorists onboard, it was not clear based on the current terms of reference whether it would be a *homeland defense* or *homeland security* mission. Other

---

<sup>107</sup> Christopher Bolkcom, Lloyd DeSerisy, and Lawrence Kapp, *Homeland Security: Establishment and Implementation of Northern Command*, Congressional Research Service Report 1 (May 14, 2003).

<sup>108</sup> President Bush’s Remarks at Homeland Security Bill Signing (November 25, 2002).

<sup>109</sup> Interview with Commander Andrew Kuepper, U.S. Navy (retired), Director, Homeland Defense Strategy and Implementation at the Department of Defense, in Washington, DC (February 18, 2010).

questions also needed to be answered. Would the vessel be boarded offshore or allowed to pull into port and covertly monitored to gather additional intelligence? What agency would conduct the boarding? What would be done if it was determined that there were terrorists onboard? Would they be prosecuted in a U.S. court or be detained on other grounds? The agencies struggled with these and many other questions. The homeland defense and security labels effectively created a gap or seam that the agencies could not clearly agree upon. There was concern among national security experts that this gap could potentially be exploited -- knowingly or unknowingly -- by terrorist organizations.

This point was evident during a 2003 Maritime Homeland Defense/Homeland Security exercise that was conducted at the Naval War College in Newport, Rhode Island. Retired U.S. Navy Commander Andrew Kuepper, who at the time was serving on the staff of the Assistant Secretary of Defense for Homeland Defense and was participating in the exercise, recounted how the exercise came to a grinding halt when discussions, “bordered on fanatical” on whether the scenario was a *homeland security* threat with the Department of Homeland Security and the U.S. Coast Guard in the lead or a *homeland defense* threat with NORTHCOM in charge. According to Kuepper, many of the participants involved in the exercise argued that the decision could not be made at their level. They believed that the decision would need to be made by the President of the United States and no operational response could take place until this issue was resolved. Unfortunately, this was not an isolated incident and this debate and confusion persisted in numerous exercises and policy discussions. The need for specific national-level guidance was apparent.

The overlap of roles and responsibilities, and the confusion that resulted was not limited to the relationship between the Department of Homeland Security and Department of Defense. The Department of Justice’s FBI and the Department of Homeland Security’s U.S. Coast Guard

experienced similar problems. In a 2006, Department of Justice report, the Inspector General referring to the FBI and U.S. Coast Guard warned that “[u]nless such difference over roles and authorities are resolved, the response to a maritime incident could be confused and potentially disastrous.”<sup>110</sup> The report cited the lack of cooperation that occurred during a terrorism response Top Officials (TOPOFF) exercise<sup>111</sup> that took place in Connecticut in April 2005. One of the scenarios in the exercise required a U.S. team to board a non-complaint 200-foot moving ferry off the coast of Connecticut. The tension occurred because FBI officials argued that the Coast Guard could not participate in the boarding because it had a “very limited capability to perform boardings when its boarding team faces armed resistance.”<sup>112</sup> The Coast Guard strongly disagreed with the FBI’s assessment, and complained that the “FBI repeatedly blocked [its] efforts, saying the FBI was the lead agency in the scenarios developed.”<sup>113</sup> One of the Coast Guard’s objectives of participating in the exercise was to use its Enhanced Maritime Safety Security Team<sup>114</sup> which in the Coast Guard’s view was more than capable to conduct the boarding. According to the Inspector General, “the Coast Guard ultimately changed the scenario to circumvent the FBI’s lead federal agency role.”<sup>115</sup> This lack of cooperation is counterproductive and it is possible that a terrorist or criminal organizations could potentially exploit this situation. National level guidance was needed to address this problem.

---

<sup>110</sup> U.S. DEPARTMENT OF JUSTICE, OFFICE OF INSPECTOR GENERAL, AUDIT REPORT 06-26 (March 2006).

<sup>111</sup> TOPOFF 3 is a congressionally mandated exercise series managed by the Department of Homeland Security’s Office of State and Local Government Coordination and Preparedness. Press Release, Department of Homeland Security, Fact Sheet: TOPOFF 3 Connecticut Venue (March 28, 2005) (on file with author).

<sup>112</sup> U.S. DEPARTMENT OF JUSTICE, OFFICE OF INSPECTOR GENERAL, AUDIT REPORT 06-26, 7 (March 2006).

<sup>113</sup> *Id.* at 7.

<sup>114</sup> The Enhanced Maritime Safety Security Team has since been renamed the Maritime Security Response Team.

<sup>115</sup> U.S. DEPARTMENT OF JUSTICE, OFFICE OF INSPECTOR GENERAL, AUDIT REPORT 06-26, 7 (March 2006).

*National Security Presidential Directive-41/Homeland Security Presidential Directive-13*

The overlapping authorities and responsibilities, mishandled operational cases, and disparate security strategies developed by each agency demanded the need for national level guidance. In December 2004, the President of the United States issued National Security Presidential Directive (NSPD-41)/Homeland Security Presidential Directive (HSPD-13) that directed the “coordination of United States Government maritime security programs and initiatives to achieve a comprehensive and cohesive national effort involving local, and private sector entities.”<sup>116</sup> It also established at the White House a Maritime Security Policy Coordinating Committee (MSPCC), to coordinate interagency maritime security policy efforts.<sup>117</sup> The MSPCC has recently been renamed and is now referred to as the Maritime Security Interagency Coordinating Committee (MSIPC).

NSPD-41/HSPD-13 also directed the Secretaries of Homeland Security and Defense to “lead the Federal effort to develop a comprehensive National Strategy for Maritime Security.”<sup>118</sup> The objective of the strategy was to “better integrate and synchronize the existing Department-level strategies and ensure their effective and efficient implementation.”<sup>119</sup> In addition to the National Strategy for Maritime Security, there were eight supporting plans that were developed. The MOTR Plan is one of the eight supporting plans. The MOTR Plan is a federal government security plan that provides an integrated coordination process with the objective of achieving a unified, timely, and effective planning and mission accomplishment by the U.S. Government in the maritime domain.<sup>120</sup>

---

<sup>116</sup> National Strategy for Maritime Security, The White House, at ii (March 2005).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> National Security Presidential Directive (NSPD-41)/Homeland Security Presidential Directive (HSPD-13): *Maritime Security Policy*, at 3 (December 4, 2004).

# CHAPTER 4

## Maritime Operational Threat Response Plan

---

### *Maritime Operational Threat Response (MOTR) Plan*

**The MOTR Plan solved the “seam of uncertainty” identified in the Department of Defense doctrine and turned the supposed disadvantage, where no obvious operational lead existed, into a strategic advantage, where overlapping authorities, capabilities, and capacities are coalesced in the MOTR process to counter our adversaries using all instruments of United States Government power.<sup>121</sup>**

### *What is MOTR?*

The MOTR Plan is a Federal interagency process to achieve coordinated action and desired national outcomes. To achieve this objective the Plan “directs establishment of an integrated network of existing national-level maritime command and operations centers to achieve coordinated, unified, timely and effective planning and mission accomplishment by the U.S. Government.”<sup>122</sup> Before the creation of the MOTR Plan there was no formal interagency process that existed to address the broad spectrum of maritime threats. The PD-27 Process was used in a limited number of cases, but lacked detailed guidance and a clear framework to coordinate interagency planning and response operations. The MOTR Plan addresses the full range of maritime security threats, including:

- 1) Terrorism;
- 2) Piracy;

---

<sup>121</sup> Interview with Commander Andrew Kuepper, U.S. Navy (retired), Director, Homeland Defense Strategy and Implementation at the Department of Defense, in Washington, DC (February 18, 2010).

<sup>122</sup> Maritime Operational Threat Response For The National Strategy For Maritime Security, The White House, at 1 (October 2006).

- 3) Other criminal or unlawful or hostile acts committed by State and non-state actors;
- 4) Drug smuggling;
- 5) Migrant smuggling;
- 6) Maritime hijacking;
- 7) WMD Proliferation;
- 8) Foreign fishing vessel incursions in the U.S. Exclusive Economic Zone; and
- 9) The detection, interdiction and disposition of targeted cargo, people, and vessels.<sup>123</sup>

The MOTR Plan also establishes Protocols for initiating real-time Federal interagency communication, coordination, and decision-making through the integrated network of command centers when MOTR is triggered. This real-time coordination is as simple as phone conferences, video teleconferences, and e-mails. The MOTR Plan imposes standards for initiating such coordination and clarifies the roles of the participants. Upon identification of a threat in the maritime domain, maritime operational threat response agencies are required to initiate coordination activities when any one of five specified conditions occurs.<sup>124</sup> Before the MOTR Plan the PD-27 Process provided the only guidance on initiating interagency coordination to address maritime threats.

The five “triggers” that initiate the MOTR Plan broaden the scope of the PD-27 Process and resolve its lack of specificity on the types of threats that require interagency coordination. Due to the classification of the five “triggers” I am unable to specifically provide them in this thesis. However, the “triggers” build upon the requirement in the PD-27 Process to coordinate when an incident has a potential adverse effect on the foreign affairs of the United States. The MOTR triggers are drafted to capture the full range of activity that might require real-time

---

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 4.

interagency coordination to achieve desired national outcomes from the “high end” case like a container vessel, which involves information about a potential WMD threat; to the relatively “low end” cases such as many maritime drug and migrant interdictions. Unlike the PD-27 Process, MOTR removes discretion of when interagency coordination shall be initiated by providing detailed “triggers.”

Additionally, the MOTR Plan allows agencies to respond immediately when appropriate with subsequent coordination for follow-up and assistance. However, when time permits, and it usually does, MOTR requires deliberate interagency coordination to develop optimal responses to achieve desired national-level outcome.

To address overlapping roles and responsibilities the MOTR Plan defines lead and supporting agencies. The designated MOTR lead agency is responsible for initiating the coordination activities, including national-level MOTR conference calls. MOTR agency roles and responsibilities are based on their authority, capability, competency, and partnerships. These factors assist decision makers on the MOTR conference call with selecting appropriate response options in various phases of any threat. The pre-designated lead MOTR agencies are:

- 1) Department of Defense – responsible for nation-state threats and overseas;
- 2) Department of Homeland Security (includes U.S. Coast Guard) – responsible for interdiction in areas where it normally operates; and
- 3) Department of Justice – investigation of maritime terrorist acts or threats, coordination of the Law Enforcement community to prevent terrorist attacks against the U.S., and domestic intelligence collection.<sup>125</sup>

---

<sup>125</sup> *Id.* at 6-7.

Supporting MOTR agencies include the: Department of State; Department of Energy; Department of Transportation; The National Counter Terrorism Center; Office of The Director of National Intelligence; and the Office of the Global Maritime Intelligence Integration.<sup>126</sup> Agency roles may shift during the course of a response based on changes in the desired outcome, knowledge about the magnitude of the threat, response capability requirements, asset availability, or a need for different authority than that originally contemplated. Maritime operations present different legal and resource challenges than those faced ashore, which requires a different and a somewhat more flexible model for threat response and the MOTR Plan provides the necessary flexibility.<sup>127</sup> For example, maritime threat responses are almost always Federal, include international law considerations, involve vast operating areas, and usually have limited response resources available.<sup>128</sup> These unique challenges make interagency coordination and utilization of all resources of the U.S. Government necessary.

In theory, the MOTR Plan would be initiated when a U.S. asset, like a U.S. Coast Guard cutter becomes aware of illicit activity aboard a vessel at sea. The Coast Guard cutter would engage their command or operations center, which determines that coordination activity with relevant agencies, is necessary to effectively respond to the case. Next, the MOTR facilitator would contact the relevant agency representatives and convene a real-time MOTR conference call to review authorities, capability of the on scene unit and other assets in the U.S. inventory, agree on a desired outcome, the means to achieve it, and specific agency responsibilities to bring the case to closure. The MOTR conference call participant's discussion might involve topics ranging from the Department of State obtaining flag State consent for boarding a foreign vessel

---

<sup>126</sup> *Id.* at 7-9.

<sup>127</sup> Interview with Wayne Raabe, Principal Deputy Chief of the Narcotic and Dangerous Drug Section at the Department of Justice, in Washington, DC (February 19, 2010).

<sup>128</sup> *Id.*

on the high seas, confirmation by Department of Justice that U.S. prosecution is viable, and making arrangements for logistics involving evidence and/or detainee transfers. The MOTR Plan and Protocols formalize this process by providing a framework and putting it in writing so it can be followed and understood by the entire interagency network.

The MOTR Plan requires that upon discovery of a specified maritime event, the relevant maritime security agencies must share information, plan, and coordinate an interagency approved response to ensure all instruments of U.S. power are employed to protect the American public. As noted in Chapter 2, *Employment of Maritime Security Capabilities*, the decision making process of which security response capability to employ and the desired course of action to respond to the threat takes place among the agencies represented on the MOTR conference call. This decision-making process is based on consensus where no one agency has formal authority over another.

#### ***MOTR Case – WARM SEAS VOYAGER***

The case of the tank vessel WARM SEAS VOYAGER (“W.S. VOYAGER”) illustrates the MOTR Plan’s effectiveness in achieving coordinated action and desired national outcomes in a real world maritime threat response case. In late April 2005<sup>129</sup>, the W.S. VOYAGER, flagged in the Republic of the Marshall Islands was bound from Romania to Wilmington, North Carolina. At the time of the boarding, the U.S. Government had recently concluded negotiations with the Republic of the Marshall Islands, which operates one of the largest open ship registries in the world, on a Proliferation Security Shipboarding Agreement as part of the President’s

---

<sup>129</sup> Although the interim MOTR Plan had not been approved as of April 2005, its principles and the framework that was developed during the interagency drafting process was used to address the maritime threat posed by the W.S. VOYAGER.

Proliferation Security Initiative<sup>130</sup>. While the vessel was in transit to the United States, the National Intelligence Community reported on several potential linkages between the vessel's owners, a crew member, and terrorist organizations. Additionally, there was other information that raised concerns about the vessel, including: 1) that the vessel had not been in the United States since 1990; 2) normally operated in the Middle East; 3) recently converted from fuel carriage to chemical carriage; 4) was reported to be carrying liquid urea (fertilizer); and 5) was noted to be in poor material condition.

Based on this information, several agencies were concerned that the vessel presented a potential safety and security threat to the United States. Senior leaders in several agencies expressed an interest in taking appropriate steps to mitigate any potential risk to the U.S. as far from U.S. shores as possible. Other agencies expressed concerns about avoiding any unnecessary interference with legitimate commercial interests, while still other agencies were concerned about how an at-sea intervention might affect ongoing initiatives like PSI and important maritime counter-terrorism agreement negotiations at the International Maritime Organization. Several agencies expressed concern about prematurely exposing investigative interests by conducting a boarding of a large commercial vessel far from U.S. shores rather than as part of the standard arrival process. In short, interagency stakeholders had differing views on the desired outcome of any U.S. intervention and on the timing and scope of the response to the perceived threat.

---

<sup>130</sup> "President Bush announced the Proliferation Security Initiative (PSI) on May 31, 2003. This Initiative is primarily a diplomatic tool developed by the United States to gain support for interdicting shipments of weapons of mass destruction-related (WMD) equipment and materials. Through the PSI, the Bush administration sought to "create a web of counterproliferation partnerships through which proliferators will have difficulty carrying out their trade in WMD and missile-related technology." The states involved in PSI have agreed to review their national legal authorities for interdiction, provide consent for other states to board and search their own flag vessels, and conclude ship-boarding agreements." Arms Control and Nonproliferation: A Catalog of Treaties and Agreements, Congressional Research Service 34 (February 2, 2010).

Additionally, given the imperfect information, uncertainties about the level of threat, differing views about how to minimize the risk, and diplomatic significance of the Republic of the Marshall Islands to PSI and other maritime security initiatives, several agencies agreed to convene an interagency MOTR conference call. The purpose of initiating that process was to coordinate the U.S. response to this potential maritime threat with interagency stakeholders, including the national intelligence community, Departments of Defense, Justice, Homeland Security, and State.

The U.S. Government with flag state consent, conducted a boarding some 900 miles off of Wilmington, North Carolina to conduct a preliminary inspection and secure the vessel prior to arrival of a complete interagency inspection team, which inspected the cargo, interviewed the crew, and scanned for radiation before the vessel approached the U.S. After an interagency determination was made that it was safe to permit the vessel to enter port, the vessel was escorted into Wilmington. The Republic of the Marshall Islands expressed overall satisfaction with the process and later supported the U.S. at the International Maritime Organization in concluding important amendments to the world's only maritime counter-terrorism convention.<sup>131</sup>

The W.S VOYAGER case represents a good example of how the MOTR Plan and its principles shifted the focus from whether an incident was a *homeland security* or *homeland defense* event and who was lead versus supporting agency to a process that focused on the desired outcomes. It also enabled the overlapping roles and responsibilities of U.S. Government agencies that were previously a vulnerability into a strength where the full inventory of U.S.

---

<sup>131</sup> The facts and discussion from the W.S. VOYAGER case were obtained from a presentation given by the Coast Guard's Office of Law Enforcement. The case is used as an example of the value of the MOTR Plan in developing and coordinating a U.S. Government response to a possible maritime threat.

maritime security capabilities were coordinated and employed to ensure the security of the American public.

### ***Interagency Development of the MOTR Plan***

The drafting and negotiations of the MOTR Plan began in early 2005, an interim Plan was approved in October 2005. The final MOTR Plan was not approved until October 2006. The MOTR Plan was drafted and negotiated by an interagency team that consisted of representatives from the Department of Justice, Department of Homeland Security (U.S. Coast Guard, and Customs and Border Protection), Department of Defense (Office of the Secretary of Defense and the Joint Staff), and Department of State.<sup>132</sup> The successful development and approval of the MOTR Plan was driven by three key factors – necessity, process, and personality.

### ***Why MOTR Was Needed (Necessity)***

As noted in Chapter 3, overlapping roles and responsibilities created confusion and potential gaps or seams between federal government agencies responsible for maritime security. There was concern that terrorist or criminal organizations intent on doing harm to the United States would exploit these gaps. The MOTR Plan addressed these concerns by explicitly identifying when and how agencies are required to coordinate with other U.S. Government entities in developing and executing maritime operational threat responses. In addition, the MOTR Plan clarified maritime threat response roles for agencies, including identifying lead and supporting agency responsibilities.

The MOTR Plan drafting group also recognized that the PD-27 Process was not designed to address the new threats that the United States faced in a post 9/11 environment.

---

<sup>132</sup> Interview with Wayne Raabe, Principal Deputy Chief of the Narcotic and Dangerous Drug Section at the Department of Justice, in Washington, DC (February 19, 2010).

Improvements in the efficiency and effectiveness of operational coordination were needed. The PD-27 Process lacked the breadth of interagency involvement required to address the spectrum of threats, and did not provide a framework to properly respond to threats in the maritime domain.

The MOTR Plan drafting group also recognized the need to establish Protocols for real-time coordination activities through a network of existing national-level operations centers. As previously noted, many agencies had operation and command centers, but they were not linked nor integrated with each other. According to Wayne Raabe, Principal Deputy Chief of the Narcotic and Dangerous Drug Section at the Department of Justice and member of the MOTR drafting team, “before the MOTR Plan the U.S. Government did not even have a complete list of agency maritime operation centers and did not know which ones were manned 24 hours per day, seven days a week.”<sup>133</sup> This lack of awareness of basic lines of communication was a symptom of a greater problem of poor interagency coordination. Not having this basic information of clearly identified and well-exercised lines of communication was a vulnerability since it would be difficult for the U.S. Government to effectively respond to an emergent maritime threat when time was of the essence.

During the period that the MOTR Plan was being negotiated and drafted, coordination problems among the agencies persisted in both interagency exercises and operational cases. According to retired Navy Commander Andrew Kuepper a member of the MOTR drafting team from the Office of Secretary of Defense, the interagency team recognized that “bold steps were needed to ensure a nationally coordinated maritime operational response to address the range of

---

<sup>133</sup> *Id.*

maritime threats to the United States and its global interests.”<sup>134</sup> This sense of necessity created the momentum required to overcome obstacles and drive the MOTR Plan to final approval.

### ***Agency Resistance to MOTR Plan and the MAERSK ALABAMA***

Not all agencies were supportive of implementing the MOTR Plan. The overseas Combatant Commanders of the Department of Defense were the most difficult to convince that MOTR was not an impediment, but a benefit to accomplishing their mission.<sup>135</sup> These Commanders were reluctant to share information with the interagency because they viewed this requirement as an infringement of their autonomy. Unfortunately, when they failed to share information with the interagency it usually resulted in an adverse impact on their operations. The example I provided in Chapter 3 of the pre-MOTR piracy case off the Horn of Africa illustrates this point. Despite this and other cases, the reluctance of the Combatant Commanders to use the MOTR Plan persisted until a tipping point was reached in April 2009 with the case of the motor vessel MAERSK ALABAMA.

On April 8, 2009, a group of Somali Pirates attempted to board the United States flagged motor vessel MAERSK ALABAMA off the Somali coast. The MAERSK ALABAMA was en route to Kenya carrying relief supplies. The ship's crew fought back, surprising the pirates who are accustomed to ships surrendering to their orders. The pirates took the ship's Captain, Richard Phillips, hostage in a 25-foot lifeboat. A U.S. Navy ship in the area responded, but pirates refused to cooperate. The MOTR Process was used to plan and coordinate a U.S. response. The Operational Commander with interagency consensus decided to employ a SEAL Team to deal with the hostage situation. The desired outcome of the U.S. Government was the safe return of

---

<sup>134</sup> Interview with Commander Andrew Kuepper, U.S. Navy (retired), Director, Homeland Defense Strategy and Implementation at the Department of Defense, in Washington, DC (February 18, 2010).

<sup>135</sup> *Id.*

Captain Phillips. The U.S. Government made every effort to resolve the hostage situation without violence. The pirates were offered numerous opportunities to surrender and were assured that they would be treated humanely. Unfortunately, the four pirates holding Captain Phillips hostage were armed and threatened his life and safety repeatedly. The on-scene Commander became concerned for Phillips' safety and authorized the use of deadly force. Three of the four pirates were killed and the fourth was taken into custody. The MOTR agencies facilitated the transfer of the bodies of the deceased pirates and the lone survivor off the Navy ship. This case was a huge success in the view of the Combatant Commander. The mission was accomplished and the follow-on logistic issues were facilitated and handled flawlessly by coordination of the MOTR Plan.<sup>136</sup> This is in stark contrast to the outcome of the piracy case that I discussed in Chapter 3, where the suspected pirates remained onboard the navy ship for more than 30 days as issues of jurisdiction, prosecution, and transportation were addressed.

### ***MOTR Drafting Process***

The process established to draft and negotiate the MOTR Plan was a key factor in developing interagency consensus, and producing a quality plan. The federal government frequently uses contractors to develop government plans. However, in the case of the MOTR Plan, each of the key agencies were requested to provide subject matter experts to take part in drafting the Plan. The drafting team met weekly in face-to-face meetings for a period of approximately ten months.<sup>137</sup> The interagency team that was responsible for drafting and negotiating the MOTR Plan were also the same individuals that would eventually use the Plan.<sup>138</sup>

---

<sup>136</sup> The Coast Guard's Office of Law Enforcement provided the facts and government actions described in the MARESK ALABAMA case; interview with Wayne Raabe, Principal Deputy Chief of the Narcotic and Dangerous Drug Section at the Department of Justice, in Washington, DC (February 19, 2010).

<sup>137</sup> Interview with Wayne Raabe, Principal Deputy Chief of the Narcotic and Dangerous Drug Section at the Department of Justice, in Washington, DC (February 19, 2010).

<sup>138</sup> *Id.*

Therefore, the MOTR drafting team had an interest in developing a Plan that would actually work. If the Plan failed in practice, the drafting team would have no one to blame but themselves. Also, important to the process was that the designated agency representatives were empowered to speak on behalf of their agency, which included decision-making authority. As the negotiations progressed, the seriousness of the negotiations was reflected in the seniority of the representatives participating in meetings on behalf of their agency.<sup>139</sup>

### ***Impact of Personality***

Personalities are critical in garnering interagency support for plans and policies, and often their impact is underappreciated. There were a number of key people that were it not for their perseverance, hard work, and determination; the MOTR Plan would have never been approved.

The MOTR drafting team members brought a wealth of knowledge and experience to the discussions. Many, if not all of the team members had been involved in exercises and cases that used the PD-27 Process. They understood its strengths and, they were also aware of the weaknesses that needed to be addressed. Additionally, all of the key players in the negotiations had previously worked together on maritime security issues, some for more than 10 years.<sup>140</sup> Due to this prior working relationship there was a level of trust between the interagency team members, which enabled them to address the difficult issues.<sup>141</sup>

Even though the need for the MOTR Plan was acknowledged by most of the agencies, the details and development of the Plan were complex and uncertain and its implementation would require extraordinary effort. For example, the issue of which agency would be in charge of maritime threat response was a contentious issue to resolve. Coast Guard senior leadership had

---

<sup>139</sup> Interview with Rear Admiral Tom Atkin, Special Assistant to the President and Senior Director for Transborder Security Policy National Security Staff, in Washington, DC (February 18, 2010).

<sup>140</sup> Interview with Wayne Raabe, Principal Deputy Chief of the Narcotic and Dangerous Drug Section at the Department of Justice, in Washington, DC (February 19, 2010).

<sup>141</sup> Interview with Rear Admiral Sally Brice-O'Hara, Deputy Commandant for Operations, U.S. Coast Guard, in Washington, DC (February 19, 2010).

directed the Coast Guard representatives to the drafting team to advocate a “unity of command”<sup>142</sup> model, where one agency – the Coast Guard - was in charge.<sup>143</sup> Part of the motivation for the “unity of command” model was that if an agency was identified as the lead it would have a stronger basis to advocate for additional resources and funding from Congress. The Coast Guard and the FBI were reluctant to compromise at times in the MOTR negotiations process because both organizations had recently created enhanced maritime counter-terrorism capabilities and were concerned that the defined roles and responsibilities in the MOTR Plan would impact the level of funding and support they received.

The Coast Guard’s position of advocating a unity of command model was strongly resisted by the MOTR drafting team because each of the agencies were unwilling to relinquish control. Captain Scott Genovese, one of the Coast Guard representatives to the drafting team, and the Chief of the Coast Guard’s Office of Law Enforcement, was able to convince Coast Guard senior leadership that the a “unity of command” model was not going to work, and advocated that the best option for the U.S. Government, and the Coast Guard was a “unity of effort” model.<sup>144</sup> A unity of effort model is based on “coordination and cooperation toward common objectives, even if the participants are not necessarily part of the same command or organization — the product of successful unified action.”<sup>145</sup> Ultimately, the interagency team agreed on a “unity of effort” framework.

Arguably, the driving force behind the MOTR Plan’s development and successful implementation is attributable to Brad Kierserman. Kierserman was one of the Coast Guard

---

<sup>142</sup> Unity of command is “that all forces operate under a single commander with the requisite authority to direct all forces employed in pursuit of a common purpose. During multinational operations and interagency coordination, unity of command may not be possible, but the requirement for unity of effort becomes paramount.” U.S. Joint Staff, Joint Operations, 13 February 2008, Joint Publication 3-0, A-2.

<sup>143</sup> Interview with Wayne Raabe, Principal Deputy Chief of the Narcotic and Dangerous Drug Section at the Department of Justice, in Washington, DC (February 19, 2010).

<sup>144</sup> *Id.*

<sup>145</sup> U.S. Joint Staff, Joint Publication 3-0, *Joint Operations*, A-2 (February 13, 2008).

representatives to the drafting team. All members of the drafting team that I interviewed, and senior leaders at the Department of Justice, Coast Guard, and National Security Staff singled out his efforts. He was credited for drafting a majority of the Plan, brokering compromise language, and operationalizing the Plan through the MOTR Protocols. Additionally, after the MOTR Plan was approved, he led an interagency MOTR “roll-out” team to educate each of the agencies on the new Plan.

The Plan also would not have been approved without the support of senior government leaders. Assistant Secretary of Defense for Homeland Defense Paul McHale played a critical role in garnering senior level interagency approval of the MOTR Plan.<sup>146</sup> According to Rear Admiral Tom Atkin, who was one of McHale’s advisors when MOTR was being negotiated, he recalled that during senior level interagency discussions McHale was able to “bring clarity to the issues” and was a “consensus builder.”<sup>147</sup> McHale also played a critical role in convincing his colleagues at the Department of Defense that the Plan was needed, and would benefit U.S. maritime security.<sup>148</sup>

In addition to these three men there are countless others that were it not for their efforts the MOTR Plan would have never been approved. According to Coast Guard Rear Admiral Sally Brice-O’Hara “you must have a sound plan and framework, but it is people that make the process work. It is the people that must build the relationships that make the process work.”<sup>149</sup> The MOTR Plan is built on a solid foundation of relationships based in trust and respect, which will likely make the process continue to work effectively.

---

<sup>146</sup> Interview with Rear Admiral Tom Atkin, Special Assistant to the President and Senior Director for Transborder Security Policy National Security Staff, in Washington, DC (February 18, 2010); Interview with Commander Andrew Kuepper, U.S. Navy (retired), Director, Homeland Defense Strategy and Implementation at the Department of Defense, in Washington, DC (February 18, 2010).

<sup>147</sup> *Id.*

<sup>148</sup> Interview with Commander Andrew Kuepper, U.S. Navy (retired), Director, Homeland Defense Strategy and Implementation at the Department of Defense, in Washington, DC (February 18, 2010).

<sup>149</sup> Interview with Rear Admiral Sally Brice-O’Hara, Deputy Commandant for Operations, U.S. Coast Guard, in Washington, DC (February 19, 2010).

### ***MOTR Implementation***

One of the key factors that led to the MOTR Plan's acceptance in the interagency was the strategy developed to implement it, including the creation of the MOTR Protocols. Following interim approval of the MOTR Plan in October 2005, an interagency team provided more than sixty "MOTR Roll-Out" briefs to relevant groups within every participating federal agency, including over 100 senior officials, and several maritime industry groups.<sup>150</sup> The MOTR "roll-out" team consisted of two people from each of the major MOTR agencies, including the Departments of Defense, Homeland Security, Justice, and State.<sup>151</sup> The interagency team through this education process was able to address agency considerations and mitigate any resistance and anxiety to the MOTR Plan. The interagency team eased agency concerns by explaining how an agency fit into the integrated MOTR command center network. Additionally, the implementation team assisted agencies in developing the necessary MOTR command, control, and coordination guidance within their agency to effectively participate in the MOTR Plan.

When the MOTR Plan was nearing final approval, the then Maritime Security Policy Coordinating Committee (MSPCC) established a MOTR Current Operations Implementation Team (COIT). The MOTR COIT is responsible for maintaining, updating, and disseminating the MOTR Protocols as approved by the MSPCC. The Protocols implement the current operations provisions of the MOTR Plan at the national level by providing regularly updated guidance and contact information to the network of integrated national-level maritime command centers on the

---

<sup>150</sup> Interview with Wayne Raabe, Principal Deputy Chief of the Narcotic and Dangerous Drug Section at the Department of Justice, in Washington, DC (February 19, 2010).

<sup>151</sup> *Id.*

initiation and administration of coordinating activities required by the Plan.<sup>152</sup> The MOTR COIT also provides subject matter expertise, including legal and policy advice, to agencies and the interagency on applicability of MOTR, conferencing procedures, and serves as facilitators for MOTR conferencing and coordination activities.<sup>153</sup> To foster awareness of MOTR and its benefits the MOTR COIT publishes a “Daily Maritime and MOTR Summary” to the MOTR agencies, which includes active maritime security cases. The MOTR COIT is also responsible for coordinating and incorporating in the Protocols after-action reporting and lessons learned from MOTR exercises and cases. The MOTR Roll-out process and COIT were critical in educating the relevant agencies on the value of MOTR, and overcoming bureaucratic inertia.

### *MOTR Protocols*

One of the factors that led to the successful implementation of the MOTR Plan, and its initial success is the creation of MOTR Protocols. Four members of the MOTR drafting team developed the Protocols. The team consisted of representatives from the Departments of Justice, Defense, State, and Homeland Security.<sup>154</sup> The make-up of the Protocols drafting team was important because by having members of the MOTR Plan drafting team write the Protocols ensured that the purpose and objectives of the Plan were properly implemented. The Protocols drafting team had an incentive to create guidance and processes that would work in practice since they would be the end users of the document.

In short, the Protocols operationalize the Plan. The Protocols provide detailed guidance and direction to the relevant maritime security agencies listed in the MOTR Plan for conducting coordination activities and conferencing, which includes the processes for information flow,

---

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> Interview with Wayne Raabe, Principal Deputy Chief of the Narcotic and Dangerous Drug Section at the Department of Justice, in Washington, DC (February 19, 2010).

oversight, and specifies the senior government officials/position responsible for the decision-making. The Protocols are so detailed that they provide guidance on how to conduct a MOTR interagency conference call, and include a matrix of the agencies that should participate along with contact information. The Protocols also designate six MOTR facilitators, which are responsible for MOTR coordination activities.<sup>155</sup>

A designated and trained MOTR Facilitator facilitates MOTR conference calls. The facilitator's role is strictly administrative in nature. The MOTR facilitator may be an employee of the lead MOTR agency, but may also be drawn from another agency.<sup>156</sup> The role of the facilitator is one of an honest broker that represents the "broad interests of the U.S. Government, not parochial agency positions of interests."<sup>157</sup> The facilitator ensures agency participation in MOTR conference calls includes "representatives of all Federal agencies and entities with a statutory, regulatory, or Executive branch-directed responsibility for any aspect of the specific response" are included in the conference call.<sup>158</sup>

The MOTR Plan and Protocols are a vast improvement over the PD-27 Process, which, as noted, was a 3-page Presidential Directive not accompanied with any implementing framework, or coordination requirements. It provided minimal guidance at best. The level of detail, explicit guidance, and the strategy to "roll-out" the MOTR Plan and educate the interagency on the Plan were critical to its acceptance and initial success.

---

<sup>155</sup> Maritime Operational Threat Response Protocols, Current Operations Implementation Team, 3 (January 2010).

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

### ***Recent Developments - Global MOTR Coordination Center (GMCC)***

In February 2010, the Department of Homeland Security announced the creation of a Global MOTR Coordination Center (GMCC) to serve as the National interagency coordinator for MOTR. The GMCC will be responsible for coordinating the MOTR process to develop interagency approved U.S. Government courses of action in response to threats against the U.S. and its interests in the maritime domain. In addition to facilitating MOTR conference calls the GMCC's functions include: maintaining and updating the MOTR Protocols; ensuring notification to MOTR agencies of issues affecting the MOTR process; assisting with the scheduling and development of MOTR exercises; and serving as an interagency resource for developing policy on MOTR-related issues.<sup>159</sup> The GMCC is located at U.S. Coast Guard headquarters in Washington, DC and has a staff of five personnel.

If employed intelligently the GMCC can improve the effectiveness of the MOTR Plan. The MOTR COIT has conducted many of the functions that the GMCC will assume without the resources. The MOTR COIT has been a collateral job for the team members. Agencies have provided COIT people and resources out of their existing budget and workforce. However, the GMCC is a dedicated team with the sole purpose of supporting MOTR and institutionalizing the MOTR process. According to Gary Rasicot, Director of GMCC, the center would be a "consistent steward of the MOTR Process."<sup>160</sup> He also noted that the GMCC would serve as a "repository of facts and experience that can explain and educate MOTR agencies on what happen in the past so we don't repeat the same mistakes."<sup>161</sup> The GMCC will increase the amount of

---

<sup>159</sup> Interview with Gary Rasicot, Director of Global MOTR Coordination Center, in Washington, DC (February 19, 2010) and Interview with Rear Admiral Sally Brice-O'Hara, Deputy Commandant for Operations, U.S. Coast Guard, in Washington, DC (February 19, 2010).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

training conducted, which will expand the number of trained MOTR participants. In addition, the GMCC will increase the number of exercises conducted, and create an environment of continual learning, which will increase MOTR proficiency of each of the MOTR agencies. One caution with the creation of the GMCC is that MOTR could become viewed as a Coast Guard Plan because of the GMCC's location and strong Coast Guard involvement its development. The Department of Homeland Security and Coast Guard should be sensitive to this issue. One of the reasons that MOTR has been successful is that MOTR is viewed as an interagency Plan that benefits the operations of all maritime security agencies.

## *CHAPTER*

# **5**

## **Conclusions and Recommendations**

---

Since the MOTR Plan's interim approval in 2005, the Plan has been successfully employed for hundreds of routine maritime threats and a number of low-frequency/high risk threats. These cases include drug interdiction, migrant interdiction, fisheries violations, bomb threats, radiation/nuclear alarm resolution, and piracy. Senior government leaders have heralded the MOTR Plan as a model plan for interagency coordination and cooperation. It has been used as a template for the development of other U.S. Government coordination efforts including the Aviation Operational Threat Response Plan, which was developed based on the Aviation Security Policy Directive and the National Strategy for Aviation Security.<sup>162</sup> In addition, the MOTR model is being considered for counterterrorism and bio-defense response plans.<sup>163</sup> The MOTR Plan's development, implementation, and execution could serve as a model for other plans within the federal government, and may be applicable to the private sector, and for our international partners.

In the post-9/11 environment the United States must be prepared to deter and respond to the full spectrum of 21<sup>st</sup> century threats to, or directed against the United States and its interests. Unfortunately, the U.S. Government has finite resources to combat these threats. Further, managing the danger that terrorist organizations pose cannot solely be achieved by relying on

---

<sup>162</sup> Interview with Wayne Raabe, Principal Deputy Chief of the Narcotic and Dangerous Drug Section at the Department of Justice, in Washington, DC (February 19, 2010); Interview with Commander Andrew Kuepper, U.S. Navy (retired), Director, Homeland Defense Strategy and Implementation at the Department of Defense, in Washington, DC (February 18, 2010).

<sup>163</sup> Interview with Rear Admiral Tom Atkin, Special Assistant to the President and Senior Director for Transborder Security Policy National Security Staff, in Washington, DC (February 18, 2010).

military operations abroad. Thus, the United States strategy to deter, defeat, and respond to terrorist attacks must be innovative and leverage all available resources of the U.S. Government. The MOTR Plan helps to achieve this objective. However, MOTR is a relatively new plan, and its future success and sustainability will require commitment and effort by the maritime security agencies and senior leadership. Below, I provide a list of recommendations in order of priority to increase the effectiveness of the MOTR Plan and promote its sustainability.

### ***Recommendations***

1. Achieve full MOTR implementation and integration for those agencies that have partially implemented MOTR, with focus on the Department of Defense. As noted, the MAERSK ALABAMA case provided momentum that increased the Defense Department's interest and understanding of the value of the MOTR Plan. This momentum must be capitalized on and the newly created GMCC should focus on this objective. Full implementation and integration of the MOTR Plan will only be achieved through continuous education and outreach.
2. The GMCC and MOTR COIT should improve senior level awareness of the MOTR Plan through education, and by holding, at least semiannually, senior level MOTR exercises.
3. Avoid the single point of failure dilemma. Currently, there are a limited number of MOTR Plan experts. The GMCC should focus on expanding this cadre of people to ensure the continued success and sustainability of the Plan.
4. The GMCC should explore the use of technology to increase the ease and efficiency of communication for MOTR coordination activities. For example, the "high-end" MOTR cases require secure communications e-mail, teleconference, and at times videoconference capabilities. During non-working hours the ability for Agency representatives to participate in MOTR conferencing is burdensome and delayed due to these constraints. Secure mobile

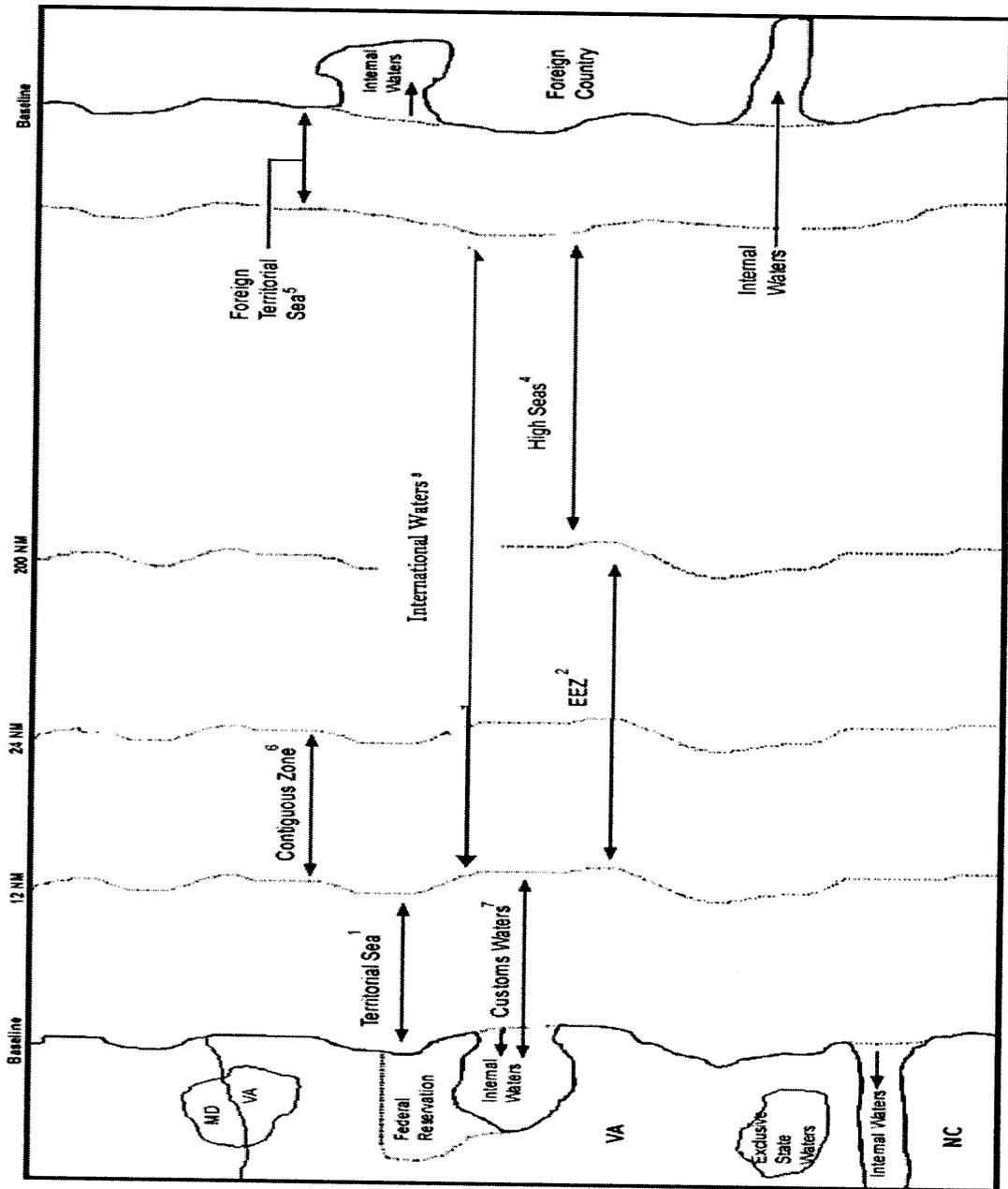
communications, and other forms of secure communications may be able to facilitate this process and address these constraints.

5. The GMCC and MOTR COIT should conduct continuous MOTR outreach through on-going education and training. MOTR implementation and integration will be sustained only if outreach is conducted with all MOTR agencies, even those agencies where MOTR awareness and knowledge is high.
6. The GMCC should develop a formal process to compile lessons learned and regularly incorporate them into the Protocols, MOTR training, and exercises.
7. The GMCC in coordination with the Department of State and MSIPC should consider the international application of MOTR. The GMCC should create a “Model MOTR Plan” that can be exported to other countries to improve their coordination and planning for maritime threat response activities.
8. All MOTR agencies should integrate MOTR training into their agency training where appropriate.
9. Include other agency members on the GMCC staff on a rotating basis. This will address the possible perception of MOTR being viewed as a Coast Guard centric process. It will also increase the number of MOTR experts in the interagency.
10. Move the GMCC out of Coast Guard Headquarters to a more neutral location. This will counter the perception of MOTR becoming viewed as a “Coast Guard” Plan.

APPENDIX

A

Maritime Jurisdictional Areas



## ***BIBLIOGRAPHY***

---

- Atkin, Tom, Rear Admiral, U.S. Coast Guard, Special Assistant to the President and Senior Director for Transborder Security Policy National Security Staff, interview in Washington, DC, February 18, 2010.
- Allen, Thad, Commandant, U.S. Coast Guard, "Friend or Foe? Tough to Tell", Proceedings Magazine, U.S Naval Institute, October 2008.
- Barker, Ed, VBSS: Evolving with the Mission, Naval Education and Training Command, April 25, 2009.
- Baumert, Kevin, Attorney-Advisor, Office of the Legal Advisor for Oceans, Environment and Science at the Department of State, interview in Washington, DC, February 19, 2010.
- Bolkcom, Christopher, DeSerisy, Lloyd and Kapp, Lawrence, Homeland Security: Establishment and Implementation of Northern Command, Congressional Research Service, May 14, 2003.
- Brice-O'Hara, Sally, Rear Admiral, U.S. Coast Guard, Deputy Commandant for Operations, U.S. Coast Guard, interview in Washington, DC, February 19, 2010.
- Connors, Tim, Chief of the Operations Law Group, U.S. Coast Guard Headquarters, interview in Washington, DC, February 19, 2010.
- Federal Bureau of Investigation's Efforts to Protect the Nation's Seaports Audit Report 06-26, Office of the Inspector General, March 2006.
- Fine, Glenn, Inspector General, U.S. Department of Justice Statement Concerning Oversight of the Federal Bureau of Investigation, Before the House Appropriations Committee, Subcommittee on Science, the Departments of State, Justice, and Commerce, and Related Agencies, September 14, 2006.
- Frittelli, John, and Parfomak, Paul, Maritime Security: Potential Terrorist Attacks and Protection Priorities, Congressional Research Service, May 14, 2007.
- Government Accountability Office Report to the Chairman, Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives, Homeland Security, Agency Plans, Implementation, and Challenges Regarding the National Strategy for Homeland Security, January 2005.
- Government Accountability Office Report to the Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Maritime Security, National Strategy and Supporting Plans Were Generally Well- Developed and Are Being Implemented, June 2008.

Government Accountability Office Report to the Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Homeland Security, DHS's Progress and Challenges in Key Areas of Maritime, Aviation, and Cyber-security, December 2, 2009.

Government Accountability Office, Maritime Security – National Strategy and Supporting Plans Were Generally Well-Developed and Are Being Implemented, June 2008.

Hernandez, Salvador, Deputy Assistant Director Federal Bureau of Investigation, Statement Before the House Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, March 27, 2007.

Kreisher, Otto, Collaborative Approach: U.S. Maritime Operational Threat Response plan coordinates federal action in ports and far from shore, Seapower, May 2007.

Kuepper, Andrew, Commander, U.S. Navy (retired), Director, Homeland Defense Strategy and Implementation at the Department of Defense, interview in Washington, DC, February 18, 2010.

Lipton, Eric. "Coast Guard, FBI Power Dispute Could Weaken Response to Attack" The New York Times, April 4, 2006.

Maritime Operational Threat Response Current Operations Implementation Team, MOTR Protocols, January 2010.

O'Rourke, Ronald, Navy Role in Irregular Warfare and Counterterrorism: Background and Issues for Congress, Congressional Research Service, June 4, 2009.

Pekoske, David, Rear Admiral, U.S. Coast Guard, Statement Concerning Border Security: Infrastructure, Technology, and the Human Element, Before the Committee on Homeland Security Subcommittee on Border, Maritime, and Global Counterterrorism, U.S. House of Representatives, February 13, 2007.

Raabe, Wayne, Principal Deputy Chief of the Narcotic and Dangerous Drug Section at the Department of Justice, interview in Washington, DC, February 19, 2010.

Rasicot, Gary, Director of Global MOTR Coordination Center (GMCC), interview in Washington, DC, February 19, 2010.

Regan, Sean, Commander, U.S. Coast Guard, Director Maritime Security Policy, National Security Staff at the White House, interview in Washington, DC, February 18, 2010.

Salerno, Brian, Rear Admiral, U.S. Coast Guard, Statement Concerning Piracy on the High Seas, Before the Senate Surface Transportation and Merchant Marine Infrastructure, Safety, and Security Subcommittee, May 5, 2009.

Swecker, Chris, Assistant Director, Criminal Investigative Division Federal Bureau of Investigation, Statement Before the U.S. House of Representatives Committee on Government Reform Subcommittee on National Security, Emerging Threats and International Relations and the Subcommittee on Criminal Justice, Drug Policy and Human Resources, December 13, 2005.

Tekeskey, Michael, Captain, U.S. Coast Guard, Chief, Coast Guard's Office of Law Enforcement, interview in Washington, DC, February 19, 2010.

The Constitution Project, The Creation of the United States Northern Command: Potential Constitutional, Legal, and Policy Issues Raised By a Unified Command For The Domestic United States, Interim Report, 2003.

The White House, Maritime Operational Threat Response Plan For The National Strategy For Maritime Security, October 2006.

The White House, The National Strategy for Maritime Security, September 2005.

The White House, National Security Presidential Directive (NSPD-41) Homeland Security Presidential Directive (HSPD-13), Maritime Security Policy, December 21, 2004.

The White House, Presidential Directive/NSC-27, Procedures for Dealing with Non-Military Incidents, January 19, 1978.

The White House, President Bush's Remarks at Homeland Security Bill Signing, November 25, 2002.

Thomas, A.R., and Duncan, James, Annotated Supplement to the Commander's Handbook on the Law of Naval Operations, U.S. Naval War College International Law Studies, Volume 73, Editors, 1999.

Time Magazine, Refugees: How Simas Was Returned, December 28, 1970.

United Nations Convention on Law of the Sea Convention, December 10, 1982.

United States Chairman of the Joint Chiefs, Joint Publication 3-0, Joint Operations, September 17, 2006 incorporating Change 1 February 13, 2008.

United States Coast Guard, Maritime Strategy for Homeland Security, December 2002.

United States Coast Guard, Coast Guard Publication 1, U.S. Coast Guard: America's Maritime Guardian, May 2009.

United States Coast Guard, Maritime Law Enforcement Manual (MLEM), Commandant Instruction M16247.1D, April 3, 2007.

United States Coast Guard, U.S. Coast Guard Fiscal Year 2009 Performance Report, February 2010.

United States Commission on Ocean Policy, *An Ocean Blueprint For The 21<sup>st</sup> Century*, Final Report, Washington, DC, 2004.

United States Congress, *The National Strategy for Maritime Security Hearing Before the Subcommittee on Coast Guard and Maritime Transportation of the Committee on Transportation and Infrastructure House of Representatives*, January 24, 2006.

United States Department of Homeland Security Fact Sheet: TOPOFF 3 Connecticut Venue, March 28, 2005.

Woolf, Amy, Nikitin, Beth, and Kerr, Paul, *Arms Control and Nonproliferation: A Catalog of Treaties and Agreements*, Congressional Research Service, February 2, 2010.