



To: Breck Bowden, Director, Lake Champlain Sea Grant
From: Samantha Hamilton, Ocean and Coastal Law Fellow, National Sea Grant Law Center,
University of Mississippi School of Law
Re: Membership to the Federal Partners Working Group (NSGLC-22-04-06)
Date: October 14, 2022

Advisory Summary

Lake Champlain Sea Grant reached out to the National Sea Grant Law Center seeking information about whether the Federal Partners Working Group (FPWG) is limited in its membership to five federal agencies. Our review of the statute, the FPWG Memorandum of Understanding, and federal membership on other related committees did not identify any limitation on the number of federal agencies that may serve on the FPWG.

Background

The Lake Champlain Special Designation Act of 1990 established the Lake Champlain Basin Program (LCBP or the Program) with the goal of bringing together diverse actors to develop a “comprehensive plan for protecting the future of Lake Champlain and its surrounding watershed.”¹ The Program, called the “Management Conference” in the original Act, was reauthorized by the Daniel Patrick Moynihan Lake Champlain Basin Program Act of 2002 and codified as part of the Clean Water Act, and evolved into the LCBP.² The Program is a partnership of federal, state, and local agencies, organizations, businesses, academics, farmers, and individuals working together to implement the Program’s *Opportunities for Action* Plan, which “identifies priority actions to restore and protect water quality and the diverse natural and cultural resources

¹ *Introduction*, LAKE CHAMPLAIN BASIN PROGRAM, <https://www.lcbp.org/about-us/how-we-work/opportunities-for-action/introduction/> (last visited Sept. 28, 2022).

² S. Rep. No. 107-339, at 2 (2002).



of the Lake Champlain Basin.” It is managed by the Program’s Steering Committee, composed of members from New York, Vermont, Quebec, federal agency members, advisory committee chairs, and one Lake Champlain Sea Grant Board representative.³

While the FPWG was designated as a subcommittee of the Program’s Steering Committee in 2001, it is distinct from the LCBP, and is not mentioned in either the 1990 or 2002 acts giving the Management Conference/Program its power. It is hosted by the LCBP as a voluntary association of agency leaders to collaborate and coordinate to more efficiently implement the goals of the LCBP and allocate resources provided by the EPA. The Group is governed by a Memorandum of Understanding (MOU) signed by all involved parties, who may leave the Group at will. This MOU is renewed every five years, with a new version to be signed by the parties in 2022-23. Because the MOU is up for renewal, Lake Champlain Sea Grant seeks clarification whether the limit of 5 agencies placed on membership to the LCBP extends to the Working Group, as a subcommittee of the Steering Committee.

Environmental Laws

The Lake Champlain Management Conference was first created by the Lake Champlain Special Designation Act of 1990 and was codified in Section 120 of the Clean Water Act to create “a comprehensive pollution prevention, control, and restoration plan for Lake Champlain.”⁴ The Management Conference, which evolved to the Lake Champlain Basin Program, has limited membership set by statute. Membership is limited to:

“(1) the Governors of the States of Vermont and New York; **(2) each interested Federal agency, not to exceed a total of five members;** (3) the Vermont and New

³ *Administration*, LAKE CHAMPLAIN BASIN PROGRAM, <https://www.lcbp.org/about-us/how-we-work/administration/> (last visited Sept. 28, 2022).

⁴ Lake Champlain Special Designation Act of 1990, PL 101–596, November 16, 1990, 104 Stat 3000.



York Chairpersons of the Vermont, New York, Quebec Citizens Advisory Committee for the Environmental Management of Lake Champlain; (4) four representatives of the State legislature of Vermont; (5) four representatives of the State legislature of New York; (6) six persons representing local governments having jurisdiction over any land or water within the Lake Champlain basin, as determined appropriate by the Governors; and (7) eight persons representing affected industries, nongovernmental organizations, public and private educational institutions, and the general public, as determined appropriate by the trigovernmental Citizens Advisory Committee for the Environmental Management of Lake Champlain, but not to be current members of the Citizens Advisory Committee.”⁵

This membership provision of the statute does not appear to apply to the Program’s committees or subcommittees, and likely would not apply to the FPWG as a semi-independent association of agency members. See, for example, the Technical Advisory Committee, which is specifically authorized by statute and whose membership with regard to federal agencies is limited only to, “officials [from] appropriate departments and agencies of the Federal Government”.⁶

Consider, for example, the Program’s Steering Committee which has more than 5 federal agency members: EPA Region 2, EPA Region 1, US Army Corps of Engineers, USDA – Natural Resources Conservation Service (NY), National Park Service – Marsh-Billings-Rockefeller National Historical Park, and the US Fish and Wildlife Service.⁷ While the Steering Committee manages the Program, it has not been read to be limited in membership by the limitations imposed on the “Management Conference” and it is thus unlikely that any other committee or subcommittee would be so bound.

⁵ 33 U.S.C.A. § 1270(b) (West 2002) (emphasis added).

⁶ 33 U.S.C.A. § 1270(c)(2) (West 2002).

⁷ *LCBP Committee Membership*, LAKE CHAMPLAIN BASIN PROGRAM, <https://www.lcbp.org/about-us/how-we-work/lcbp-committees/lcbp-committee-membership/> (last visited Sept. 28, 2022).



Conclusion

Based on the wording of the statute, the current federal agencies who have signed the most recent MOU, and federal membership on other related committees, there is nothing to indicate that membership to the FPWG is limited to 5 federal agency members. There is nothing in the plain language of the statute limiting membership of any committee or sub-committee of the Program, and preliminary research has shown no other applicable statutes that could otherwise limit membership. We hope you find this information helpful, and please let us know if you have any additional questions.