

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 23, 1974

To Maynard F. Marsh, Commissioner

Dept. Inland Fisheries and Game

From Lee M. Schepps, Assistant

Dept. Attorney General

Subject Migratory Game Birds


This is in response to your memorandum of October 7, 1974. In that memorandum, you inquired whether or not the regulations duly adopted by you pursuant to Title 12 M.R.S.A. § 2352 relating to the hunting of migratory game birds are "contrary" to the provisions of Title 12 M.R.S.A. § 2455.

The answer is that to the extent of any inconsistency between your general regulations and the specific provisions of a statute, the specific provisions of the statute control. Your regulations under Title 12 M.R.S.A. § 2352 are patterned upon the Federal regulations on the same subject and deal with a broad variety of matters relating to the season, time, place, method and manner of hunting, transporting, processing and possessing migratory game birds. Among the provisions of the regulations are the times of the day in which hunting is allowed. Title 12 M.R.S.A. § 2352 provides a general penalty for violation of any regulations of the Commissioner under that section. The penalty is "a fine of not less than \$50" plus possible additional penalties.

Title 12 M.R.S.A. § 2455, on the other hand, does not deal with all aspects of hunting, possessing and transporting migratory game birds. It deals specifically with the times of the day within which hunting of migratory game birds is permitted. That statute specifically provides that hunting for migratory game birds between sunset and one half hour before the following sunrise is punishable by a fine of "not less than \$200 nor more than \$1000", among other possible penalties.

First, we note that one penalty is "not less than \$50" and the other is "not less than \$200". A fine of \$200 to \$1000 would be permitted by and consistent with both subject statutes. Moreover, when two statutes are ostensibly conflicting, but one deals with the subject matter in a specific manner and the other in a general manner, the statute dealing with the subject matter in a specific manner is generally held by the Courts to control. In my opinion, Title 12 M.R.S.A. § 2455 deals specifically with "night hunting" of migratory game birds and, to that extent and with regard to that specific subject, controls over the provisions of Title 12 M.R.S.A. § 2352 dealing generally with migratory game birds.

I hope this is responsive to your request. Let us know if we can be of further assistance.



LEE M. SCHEPPS
Assistant Attorney General

LMS/bls