

Moshe Tendler

The Halachic Status of the Swordfish

To Remove a Stumblingblock — A Teshuva With an Epilogue

In March of 1966 (5726), I issued a fact sheet to be distributed to the many people who called my office at Yeshiva University requesting information on the kashrus of swordfish (*xiphias gladius*). The essential paragraph reads as follows:

The adult forms sold commercially fail to evidence a single scale. A number of ichthyologists have reported that the swordfish does have scales when born and loses them during maturation. All evidence, however, points to the probability that these scales, if they are present, are not of the kosher variety.

RECENTLY, the Conservative Rabbinical Assembly declared swordfish to be a kosher fish, and disseminated this opinion widely, creating doubt and confusion even among Torah observant Jews.

The following analysis of the halachic and scientific literature is presented to reaffirm the practice of centuries during which the swordfish was not eaten by Jews who believed in the Divine origin of Torah and the authority of our Sages.

*These you may eat of the fishes,
all that have fins and scales.*

—Leviticus: XI:9-12

Rashi defines the Biblical term "scale" (*kaskeses*), in accord with Nida 51b, and Chulin 59a and 61b, as an outer layer (shell or peel) set in the skin of the fish resembling the armor (coat of mail) worn by Goliath when he fought with David (viz., Targum—"Kal-fin"). The *Turefos* commentary emphasizes that the exact definition of the term *kaskeses* was handed down in errorless transmission as it was given to Moses on Mount Sinai.

The Rambam's definition of the term *kaskeses* has served as the primary source for all the leading Torah

scholars whose rulings have determined Torah law and custom. The following is a free translation of the halachic definition of that type of scale which serves to identify the fish as a kosher variety:

Do not think that the term 'scale' refers to those structures that are set into the skin and actually affixed to it. Rather it refers to a type of structure like the nail of man which can be removed from the skin of the fish by hand or with a knife. But if it be affixed to the skin and not separated therefrom at all [i.e., no free margins], then the bearer of these 'scales' may not be eaten. This is the intent of the Talmud in referring to the scales as an 'outer garment' that can be peeled off as one peels a fruit or removes bark from a tree. It resembles the overlapping scales of armor designed to guard the gaps in the armor plate lest a thin arrow get through.

The *Shulchan Aruch* (Rama) records this definition as halachically binding, and no halachic authority has ever disputed this definition. The biological term "scale" includes such skin structures as occur on the tail of the rat. Removeability is not a prerequisite.

With this definition in mind, it must be obvious that the biological term "scale" is not the same as the Torah's definition of *kaskeses*. Ichthyologists recognize four types of fish scale. The *ganoid* scale found on the sturgeon, or the *placoid* scale of the shark are specifically excluded from the Biblical term *kaskeses* since they are not "removable" scales. Indeed, the educated layman would not see any similarity between the heavy bony plates of the sturgeon or the needle-like projections on the shark skin and the classic kosher scale of the whitefish or carp.

During the last few decades, sturgeon was sporadically classified as a kosher fish by some who were ignorant of either the halachic or the scientific facts. Despite the absence of any "scales" that could be seen and removed; despite the confluence of so many auxiliary signs considered by Talmudic authorities to be typical of non-kosher fishes such as a ventral mouth, black roe, a heterocerclic tail (divided into unequal halves), many Jews had been misled into a violation of a Biblical ordinance. Contributing to the confusion was a Fisheries Leaflet (No. 531) of the United States Depart-

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ment of the Interior, prepared by I. Ginsburg, Systematic Zoologist on the staff of the Fish and Wildlife Service. This leaflet was issued in response to many inquiries "whether certain fishes are kosher." Despite the author's lack of halachic qualifications, and despite many inclusions that clearly mark this leaflet as a biological treatise unrelated to the requirements of Torah law, this leaflet has once again appeared to mislead and misdirect Jews anxious to observe Torah law. It serves as the main proof cited by the Conservative clergy for the kashrus of swordfish. In their 1966 *Proceedings*, they cite:

1. the *Talmudical Encyclopedia*, which notes in the caption under the drawing of a swordfish that it has "scales as a juvenile but not when mature." No decision is rendered in that article on the halachic status of the swordfish. Instead the caption refers the reader to the text material in which the swordfish (*akaspaias*) is listed among those fishes who lose their scales upon capture. Any unbiased reader would have concluded that the "swordfish" of this article is not our *xiphias* species;

2. a citation from the *Darkai Teshuva* (quoting the *Keneses Hagedola*) that it is customary to eat the "fish with the sword" because although it appears to have no scales, it sheds its scales while battling to resist capture;

3. a reference to an article published in *Hapardes* that proposes swordfish to be a kosher fish;

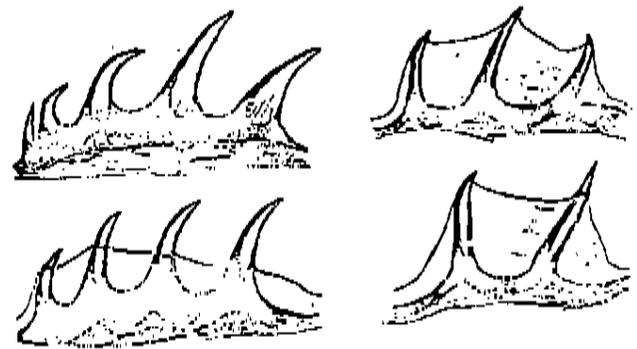
4. a statement by a Dr. Ganz that Dr. Bruce B. Collett of the United States Department of the Interior is a competent ichthyologist. This is preparatory to a statement that Dr. Collett confirms the competence of Isaac Ginsburg who issued the government leaflet. A literature citation from *Nakamura et al.* 1951, that swordfish have scales as juveniles completes the "halachic" treatise.

Now the facts—halachic and scientific:

1. not one of these references cited refers to the removability of the scales—an absolute requirement for a kosher scale;

2. the fishery leaflet lists eels, catfish, and sharks as fish that have scales and therefore are kosher—as "kosher" as swordfish. The *Talmudical Encyclopedia* lists these unequivocally as NOT kosher. Clearly the scale of Ginsburg is NOT the scale of Leviticus! The *Talmudical Encyclopedia* does NOT list the swordfish as kosher. The kosher fishes are so captioned and they include tuna, bonito, mackerel, sardines, hake, carp, and sunfish.

3. even Ginsburg clearly sounds a warning with re-



Various stages of scale development in the *xiphias gladius* as shown by G. F. ARATA.

gard to swordfish. "Swordfish during early juvenile stage of life have scales that are markedly specialized and rather unique. They are in the form of bony tubercles or expanded compressed platelike bodies. These scales are rough, having spinous projections at the surface and they do not overlap one another as scales in most other fishes do. With growth the scales disappear and the larger fish including those sold in the market have no scales." Yet they cite the *Darkai Teshuva* who clearly refers to a fish possessing scales as an adult. The citation, which they quote only in part, concludes (in free translation): "A government official questioned my teacher as to the kashrus of the 'fish-with-the-sword' since it has no scales. My teacher therefore took a black cloth, placed it in the net, and proved that the fish does shed its scales, confirming the truth and accuracy of our Torah laws." All ichthyologists deny that the swordfish has scales as an adult.

4. *Nakamura* (p. 269) claims that in the 454 mm. size (20 inches) scales are already degenerate. They appear clearly as "bony plates" only on specimens up to a size of 8 inches—hardly the ferocious fish of the *Darkai Teshuva* citation. Surely the swordfish of America is not the fish referred to in the *Keneses Hagedola*!

5. Rav Z. Waltner, Rosh Yeshiva of the Ets Haim Yeshiva in Tangiers, writes that the swordfish is commonly sold in his area. When he arrived in Tangiers 16 years ago, he determined that the great rabbinic authorities of the Sephardic world such as the author of *Vayomer Yitzchak*, as well as the famous Rav Itzel of Ponovitz, identified this fish as non-kosher. However several families ate this fish claiming that they have been taught that the swordfish "sheds its scales during its anger." Rav Waltner asserts, "I investigated the matter with the fishermen who unanimously agreed that they never found any scales on the fish, net, or its immediate vicinity."

6. Dr. G. Testa of the Institute for Marine Science in Monaco—a world renowned marine biologist—writes

"L'Espadon . . . ne possède pas d'écaille. La peau est lisse chez les adultes, mais chez les jeunes elle est couverte de petites tubercules." (translation:) "The swordfish does *not* have scales. The skin of the adult is smooth but the juvenile forms are covered with small tubercules." The term "tubercules" is used to indicate a variation in skin texture as contrasted with a true scale.

7. Dr. James W. Atz of the Museum of Natural History in New York clarified the literature reference for me in an interview on April 5, 1968. I quote from our conversation: "The scale of the swordfish is so atypical that it cannot be considered as the usual scale." . . . "It is not a true scale but a spiny process."

8. F. R. LaMonte,* curator emeritus, Department of Ichthyology of the American Museum of Natural History, reported in 1958 on the "keeled" scales of the swordfish to which *Arata* (1954) and *Nakamura* (1951) make reference, and which serves as the basis of Dr. Bruce Collette's statement that swordfish have scales. (*Bulletin, American Museum of Natural History*, Vol. 114, Article 5, page 391, 1958). I quote verbatim:

They resemble in general, the placoid scale originating in the dermis (under the skin not on top of it) with its spine eventually breaking through the epidermis.—[The placoid scale is found on the shark]—(see diagram from *Arata, G. F.*)

9. There is a teshuva from a recognized halachic authority (*Shemesh Tzedaka, Yoreh Deah*, 14) concerning spinous scales: "that which appears as scales are not true scales for they resemble nails and are but stiff dermal projections . . . the fish is therefore *not* kosher."

10. The reference to the *Hapardes* article ignored my own point-by-point rebuttal of this article in the following issue as well as other rebuttals that were subsequently published.

11. Since Dr. Collette's opinion is the mainstay of the responsum published by the Rabbinate Assembly, I wrote to Dr. Collette on April 1, 1968 to evoke from him a clear statement concerning the nature of this swordfish scale. The question I posed read as follows:

"Does the scale of the juvenile swordfish resemble the scale of the whitefish or carp with respect to its relatively loose attachment to the underlying integument?"

I received the following response dated April 15:
"Specifically the scales of the juvenile swordfish *do not* resemble the scale of whitefish or carp in respect to

* Miss LaMonte also reports on a new type of scale, found on some specimens which she calls a "glassy scale." In a lengthy telephone conversation with Dr. LaMonte on April 9, 1968, I was unable to clarify the exact nature of this scale (unreported by any other investigator). Dr. LaMonte asserted that "It does not resemble any other known scale and therefore cannot be classified as one of the four scale types."

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their loose attachment to the skin. However they are certainly homologous to scales of other fishes." (The term homologous is defined as "showing a similarity of structure, embryonic development and relationship." For example, the hand of man and the wing of the bat are homologous structures.)

This recent clarification by Dr. Collette should be recognized even by the author of the spurious "heter" as a total refutation of the scientific basis for their conclusions.

THE TALMUD LISTS but two exceptions to the absolute requirements of having visible scales:

- fish that shed their scales when netted, like the mackeral;
- fish that have scales developing later in the life cycle; consequently the juvenile forms that lack scales may be eaten since they *do* have scales at maturity.

But no place in the Talmud or the responsa literature is there any reference to such a deviant: a fish that has scales as a juvenile but not as an adult. Yet the Conservative clergy must be aware of Talmudical references to some form of swordfish since it is mentioned in the *Talmudical Encyclopedia* article that they cite as a basis for their "heter." If the swordfish of the Talmud had "juvenile scales," the Talmud would have surely recorded this fact.

I discussed the above presented facts with my great teachers, Rav Moshe Feinstein, א"י שליט"א, and Rav Yosef Dov Solovitchik, א"י שליט"א, and they concur with my decision that on the basis of the evidence presented, the swordfish (xiphias gladius) is a non-kosher fish.

May those who observe the laws of the forbidden and the permitted merit joining in the feast of the Leviathan. (An epilogue follows on page 16.)

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The Swordfish and the Sword of King Chezkiyahu

An Epilogue to a Teshuva

*When our love was great
we shared the edge of a sword,
now a bed of 60 cubits
does not suffice.*

-- SANHEDIN 7a

While in the library of the Museum of Natural History, studying the available source material for the foregoing *teshuva*, I felt a sense of foreboding.

Are we entering a new era of open aggression—of overt hostility—in our relationships with Conservative Judaism?

Is there to be a new battlefield, another "*mechitza*"-issue which will further divide the small remnant of Israel?

Must I accept it as tragic reality that the *mechitza*, the halachic wall that divides the Torah-observant Jew from the adherents to Conservative Judaism, has made of us two religions?

JUDAISM has been decimated during these last three decades by two destructive forces—physical destruction in Europe and spiritual destruction in Europe and America. Conservatism has legitimized desecration of our Shabbos, killed by neglect our marital laws, and destroyed the sanctity of family life and natural heritage by their failure to consistently enforce the divorce laws and the laws governing conversion to Judaism. Are they now intent on doing away with the dietary laws by planned confusion so as to salve the conscience of their adherents who don't observe these laws anyway?

What motivated them to issue a "*heter*" on swordfish? Do they believe that the Jewish lust for swordfish steak must be satiated so as to guarantee the progressive development of Jewish consciousness and Torah observances? Since they try to maintain a "Torah-true" posture why the "big-lie" technique? Why do they quote the Ramban's definition of a scale (*kaskeses*) and then cite a series of secular references *none of which* comment on the prime requisite of a kosher scale—its removeability? Why, if they accept the Ginsburg leaflet as adequate halachic precedent, did they not permit eel, shark and catfish? Did they decide on the basis of consumer surveys that a "*heter*" on swordfish and sturgeon is commercially more significant and therefore give it priority? Why the conscious premeditated attempt to pervert the truths of our Torah concerning Shabbos, Taharas Hamishpacha, divorce and marriage laws?—and now sturgeon and swordfish?

How clearly I hear the echo of our silence! Why have we been so diplomatically obtuse in our reaction to Conservatism? Why do I evoke shock and disbelief in the sixty-five year old stalwart of a Conservative Temple when I tell him that his spiritual leaders do not believe that G-d gave us our Torah; or when I tell him that his "*rabbi*" does not have *smicha*, or even familiarity with any of the texts that have tradi-

tionally been identified with rabbinic scholarship?

We should have demanded of the Conservative laity, during these many years, a defense of their observance of Simchas Torah. Why do you dance with our Torah? Since your "teacher and preacher in Israel" maintains that this Torah was "written by a group of wise men over several centuries and fraudulently presented as the actual word of Hashem," why do you embrace, kiss this symbol of deceit? Why not substitute your son's text in nuclear physics or molecular biology? Why not go way out and design the Torah crown in the shape of the double helix of the DNA molecule?

No! I am not prepared to "drum out" of our small army of survivors the millions of non-observant Jews. Amoral leaders who sold their Torah birthright for a bowl of lentil soup, cannot be permitted to lay claim to the blessing of Isaac and thus mislead and misdirect. They must be forced into a full disclosure of their ideology and theology. Let their adherents know where they are being lead. If you want to go about composing responsa in imitation of the rabbis of Israel, let me first see some statistics. How many of your congregants have kosher homes but trefa stomachs because of a double standard that exempts the Chinese restaurant from halachic disciplines? How many of the children of your members keep kosher homes? When did you exhort your women to go to mikveh? How many of your second- and third-generation Conservatives are liberal enough to have married outside the faith? What is your honest prognosis for your fourth and fifth and fiftieth generations? Will they be recognizable as sons of Abraham or will they be indistinguishable from the rest of humanity, or inhumanity? A moratorium on lies—a designation of several years as "years of integrity"—will give us the opportunity to win back the Torah allegiance of all Israel. Judaism can survive if we have masses of non-religious, non-observant Jews. Judaism cannot survive the hyphenation of "Conservative," "Reform," and "Reconstructionist."

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What did King Chezkiyahu do? He plunged a sword into the entrance-way to the study-hall and announced: "He who refused to involve himself in the study of our Torah [la'asok Ba'Torah] let him be pierced with the sword." They searched from Dan to Beersheva and could not find man, woman, or child who had not mastered the laws of the holy and the defiled, the permitted and the forbidden. (Sanhedrin 94b).

King Chezkiyahu did not demand *limud Ha'Torah* study alone, but *la'asok Ba'Torah*—personal involvement with Torah as a way of life, a fact of Jewish existence, not a transient phase of our national devel-

opment. The first Torah blessing recited by the Jew every morning reads:

Blessed are you Hashem who has sanctified us by commanding us la'asok Ba'Torah!

Torah study is not an exercise in medieval Jewish literature or ancient legal codes. Our Oral Torah is not "one man's opinion" to be disputed by every theology student with twelve credits in Old Testament literature. It is our way of life, our source of truth, our reason for existence as a unique entity among the nations of the world! You can't pervert Torah truths without incurring my resentment. You cannot deny this perversion without incurring my disdain. If but you would state your position with integrity, with candor, you would not threaten the spiritual well being of my children; we could then devote our energies to the task of returning the wayward, of convincing those who err of their error. Let us meet your duty if you dare! Let the truths of our Torah—without "apologetics," modification, and explanation—be spoken. Never after will they be able to accept the half-truths and whole lies of the clergy of Conservative Judaism. Don't threaten my right to my heritage, my Torah. Write your own Torah! Find your own prophets! Originate your own customs!—Don't plagiarize my ideas, my literature.

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WHEN OUR LOVE WAS STRONG, when all Jews knew their obligation and were cognizant of their failings, we were governed by the laws of friendship and brotherhood: —chastise your friend; —do not hate your brother in your heart.

The strong helped the weak and then was helped in turn. No matter how tight the situation, even on the edge of a sword, our love for each other—*ahik* and *sinner*—governed our daily lives.

But when the source of this love is rejected, when G-d and His Torah are equated with "G-d-concepts," "constructs," and "ethical theories," the sword must be turned into a scalpel to cut away the diseased tissues lest the whole body of Judaism grow weak and die. When our brethren substitute the Decalogue alone for the entire Dialogue of "*Peh el Peh adabair bo*"—the dialogue between Hashem and Moshe which gave to man his code of conduct, and to the Jew *his* code of conduct—they substitute partial "truth" for the absolute truth of our Torah. Even the vastness of the Universe is too small to contain truth and falsehood. Let those who sought strength for their failings by organizing a union of non-believers once again become the lonely in search of truth, in quest of that code of conduct that is "goodly in the eyes of G-d and man." □