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## The Turning of the Tide: The Kashrut Tale of the Swordfish

The biblical signs to distinguish between kosher and non-kosher fish seem exceedingly straightforward: the presence of fins and scales defines a fish as kosher. Despite this seeming simplicity, there have often been difficulties in classifying certain fish. The swordfish (*Xiphias gladius*) is an example of a fish with an interesting halakhic history. Possibly mentioned as early as the *Tosefta*, a “fish with a sword” was permitted in the 17th century and repeatedly thereafter. In the 20th century, the kosher status of the swordfish became the subject of an acrimonious debate between the Orthodox and Conservative rabbinate in the United States, and between American Orthodox rabbis and the Israeli rabbinate. This paper traces that history, presents the arguments of the various players, and endeavors to explain why those who prohibited the swordfish seem to have won.

### INTRODUCTION

Based on the ruling of the renowned Sephardic *posek*, the *Knesset haGedolah*, Rabbi Chaim ben Yisrael Benvenisti (1603-73),<sup>1</sup> who permitted “the fish with the sword,” halakhic decisors over three hundred of the last three hundred and fifty

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1 The *Knesset haGedolah* was born in Constantinople and completed his rabbinical studies there. He later filled the post of rabbi of Smyrna (Izmir), Turkey and also lived in Tire (see his *Hagahot* to Tur, Even Ha’ezer 26:7), a city 110 km. from Izmir. This ruling is found in his *Hagahot* (commentary) to the *Beit Yosef*, *Yoreh De’ah* (henceforth, *YD*), 83:74, and in *Ba’ei Chayyei*, 125. There is a possibility that the swordfish is referred to in the *Tosefta* and Talmud, as noted in note 60, and the importance of that reference should not be minimized. However, the *Knesset haGedolah* is the first to explicitly refer to a “fish with a sword.”

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years, repeatedly and uniformly permitted some types of “swordfish.” The first time this was seriously challenged seems to have been by Rabbi Moshe David Tendler, Ph.D., in America in the 1950s. For reasons explored in this paper, his challenge was phenomenally successful. No one growing up Orthodox in the United States during the last forty years would have dreamed of considering the swordfish kosher. Indeed, currently, in every kosher fish list belonging to an Orthodox kashrut organization in America, the swordfish is categorized as non-kosher.<sup>2</sup>

Rabbi Tendler’s successful campaign to overturn what was essentially a longstanding halakhic tradition developed into a protracted battle with both the Israeli Chief Rabbinate, in the persons of Chief Rabbi Isser Yehudah Unterman and Rabbi Shimon Efrati, the head of the Chief Rabbinate’s National Kashrut Division, and with the Conservative Movement in the United States. Given the fact that this issue became a *cause célèbre* in the 1960s and ’70s, dividing Orthodox and Conservative authorities, both of which pledge fidelity to the Halakhah, a great deal of polemics accompanied the debate. During this period, Rabbi Tendler and Orthodox Jewry in America took the prohibitive approach, and the Conservative movement periodically reiterated its position that swordfish was kosher, and indeed permits it to this day.<sup>3</sup>

Given the heated rhetoric that accompanied the original rulings, there exists a great deal of confusion regarding their legal basis. Complicating the matter is the fact that although the two principal signs of kosher fish – fins and scales – are explicitly stated in the Bible, and appear relatively straightforward, the definition of what these signs mean and the identification of a specific fish as kosher has often caused debate. The latter is mainly because human knowledge about the anatomy of fish is constantly changing: scientific information in all areas is

- 2 Today, some organizations, such as the Orthodox Union (OU), are hesitant to publish official lists because of the confusion inherent in popular fish names due to regional variability. However, see the lists at: <http://www.creweb.org/kosher/consumer/articles/fishfaq.html> and <http://www.kashrut.com/articles/fish/>. Because of the difficulty of making reliable lists, Rabbi Yosef Eliyahu Henkin (*Tshuvot Ibra*, Vol. 2, p. 55) stated in 1957 that he avowed no responsibility for the *Igud Harabanim* fish list.
- 3 See the succinct statement at <http://groups.msn.com/judaismfaqs/kasruthkeepingkosher.msnw>: “There are two fish that are somewhat controversial, and have had a long history of dispute whether they are kosher or not: Swordfish and sturgeon. ... Most (but not all) Orthodox say these two fish are unkosher. ... The CJLS has accepted a *teshuva* from Rabbi Isaac Klein that permits them to be eaten.” This position is still followed in practice. For example, in Hartford, Connecticut the large supermarket Crown Market is under the supervision of the Greater Hartford Kashrut Group, a Conservative organization. Both the fish counter and Rabbi Marshal Press, the *mashgiach* (kashrut inspector) confirmed that they sell swordfish as kosher (phone conversations, 12 April 2005).

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continually in flux, and this is certainly true regarding swordfish and their scales.<sup>4</sup>

This paper does not attempt to offer an halakhic ruling on the kashrut status of the swordfish; rather, it is an historical study that collects and analyzes the relevant halakhic and historic sources concerning swordfish kashrut. In order to follow this tale, some knowledge of fish anatomy and of the general laws regarding the kashrut of fish are required. The paper will begin with these. The ensuing legal history of swordfish kashrut will then be presented in two sections: the three hundred years leading up to the mid-20th century and the past last fifty years. When necessary, in the course of the historical survey of the controversy, a more detailed discussion of some of the halakhic principles will be presented. The historical survey will be followed by an analysis of the historical context of the modern debate. It will be suggested that the historical context, particularly the tension between scientific discoveries in the 20th century and longstanding, halakhic traditions, as well as the polemical nature of the halakhic debate between Orthodox and Conservative in North America, contributed to the substantive issues in the modern debate, as well as to its outcome. This is not to negate the possibility that the outcome, the near universal prohibition of swordfish among halakhic Jews, was due to the merits of Rabbi Tendler's arguments and the justice of his position. Rabbi Tendler was certainly sincere in his belief that swordfish is non-kosher, and he may indeed be correct. That is not the topic of this paper and it will not take a stand on that aspect. Merely that Rabbi Tendler's cause was aided and expedited by the ancillary sociologic phenomenon highlighted herein.

GENERAL PRINCIPLES OF FISH KASHRUT

Biblical law, as recorded in Leviticus 11:9-10 and Deuteronomy 14:9-10, and interpreted by the Talmud and early commentators, mandates that fish are the only kosher sea creatures;<sup>5</sup> fish, that is, which have at least one fin (*snapir*) and one

- 4 Part of the lacuna in the scientific knowledge about swordfish results from the inability to raise them in captivity. Many other large sea creatures can be seen and studied at aquariums – swordfish cannot.
- 5 Although this may not be obvious from the verse, it is stated by the 'Arukh Ha-shulchan, YD, 83:5-11 based on *Mishneh Torah* (hereafter, *MT*), *Hilkhot Ma'akhalot Assurot* 2:12, who further implies that to be a "fish" means to "look like a fish," and this excludes small sea bugs, large sea animals (e.g. seals), aquatic mammals, and such creatures as seahorses and frogs. See also *Halakhot Ketanot* 1:255 and 2:5. Ha-Gaon R. Eliyahu me-Vilna (*Eliya rabbah* on mishnah Kelim 10.1 and mishnah Niddah 3.2) says that all water-dwelling creatures are in the category of *dag* – fish. Cf. Rambam's commentary to *Sefer Ha-mitzvot*, principle 9. It seems from the Rambam in other contexts that all sea creatures are "fish"

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scale (*kaskeset*),<sup>6</sup> both discernible to the naked eye.<sup>7</sup> Even very fine scales are considered to be halakhic scales if they can be made visible by any method, including scraping off the scales with a rag of a different color, soaking the fish in water, or holding the fish up to the sun.<sup>8</sup>

Although two apparently independent physical indicators are specified by the Torah, the Talmud remarked, and the halakhah ruled, that all fish with scales also have fins, although not all fish that have fins necessarily have scales.<sup>9</sup> Considered an ancient tradition (*Tosafot*, Chullin 66b, s.v. *kol*), this principle may be relied upon to determine the kashrut of a fish. Thus, if one finds a fish that has scales, it may be categorized as kosher without further ado, and thus in practice there is

(*MT, Hilkhot Tum'at Hamet* 6:1 and *Hilkhot Kelim* 1:3). For a discussion of the definition of “fish” see Shlomoh Taitelbaum, *Lula'ot tekhelet, Petil tekhelet* (Jerusalem, 2000), pp. 126-36. Note that Malbim (*Shmini*, p. 399), Rav Hirsch (Lev. 11:9), and many others say that the signs of fins and scales are in theory applicable to amphibians and other sea creatures. See note 10 below for more detail.

- 6 *Torat Kohanim*, Lev. 11:9; *Tosefta* Chullin 3.27 (Zuckerman); Chullin 59a, where Rav Yehudah was of the opinion that at least two scales are required. See *Shulhan Arukh* (hereafter, *SA*), *YD*, 83:1 where the *SA* rules like the Rashba and Ran that the scale can be anywhere on the fish and the Ramo rules like the Rosh limiting where on the fish the one scale may be found.
- 7 If the scales can only be seen using a magnifying implement they are unacceptable (*Tiferet Yisrael* on mishnah Avodah Zara 2.6; ‘*Arukh Ha-shulchan*, *YD*, 83:15; *Yalkut Yosef*, *YD*, 83:8; *Sho'el ve-nish'al* 5: *YD*, 64 [who actually cites a dissenting opinion from the *Yis'arish*, *YD*, 1-2]; *ibid.* 6:115 and 7:109; *Shu"t binyan av* 2:42). The *Tiferet Yisrael* offers two reasons for rejecting microscopic scales. One is specifically derived from the biblical word used for “scale.” The other relies on the general principle that Jewish law only deals with macroscopic phenomena. This principle, that Halakhah only deals with phenomena visible to the unaided human eye, is applied in other halakhic areas as well. Thus, for example, microscopic organisms are not prohibited for consumption (*Binat Adam* on *Chakhmat Adam* 38:49; see also *Mishneh halakhot* 4:128-129; *Tzitz Eliezer* 8:15: *Kuntres meshivat nefesh*, 14; *Shu"t sho'el ve-nish'al* 5: *YD*, 64; *Yechaveh da'at* 6:47; *Yabi'a omer* 4: *YD*, 20). The ‘*Arukh Ha-shulchan*, 84:36, notes that microscopic bugs in both air and water pose no halakhic problem. However, if they are visible in sunlight, even if very small, they are halakhically significant. Similarly, telescope sightings are not halakhically valid. Rabbi Yitzhak Zeev (Velvel) Soloveitchik (d. 1959) argued that the courts could not declare *Rosh Chodesh* (the beginning of a new month as determined by sighting the new moon) until the new moon was visible to the naked eye. Before this time, even if the moon could be seen through a telescope, the month could not be sanctified (*Chiddushe ha-Griz 'al ha-Torah*, Stencil Edition, *Bo'*, Paragraph 54).
- 8 *Levush*, *YD*, 83:2; *SA*, *YD*, 83:2 and *Shakh*, *YD*, 83:2.
- 9 Mishnah Niddah 6.9 (Niddah 51b); Chullin 66b; *MT, Hilkhot Ma'akhalot Assurot* 1:24; *SA*, *YD*, 83:3.

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really only one sign required in order to declare a fish kosher.<sup>10</sup>

- 10 *Tosefta* Chullin 3.26 (Zuckerman ed.); *SA, YD*, 83:3. *The Perishah* (*YD*, 83:7) asserts that the rule holds true even if one examined the entire fish and was unable to find any fins. See however *Kereti* 83:2 and *ha-Ketav ve-ha-'kabbalah, Shemini* who disagree and hold that this principle is based on the legal decision to rely upon the majority of cases even though this rule does not necessarily apply to all cases, and cannot be relied upon to classify a fish as kosher in the face of seemingly contrary evidence. Rabbi Avigdor Nebentzal has been reported (*Kuntres siman Eliyahu*, p. 62) as having trouble classifying this rule as based on the majority of fish because, in that case, the Talmud would not have wondered why the Torah stated both signs; the mention of fins was required for the minority cases, i.e. fish that have scales but do not possess fins. However *Sho'el u-meshiv kamma'* 3:54 previously raised and deflected this question. See also *Darke Teshuvah* 83:27 in the name of the *Migdal 'Oz* (*Dine dagim* 8:9) that the rule only applies to those creatures that “look like fish.”

The *Tosafot Yom Tov* (*Ma'adane Yom Tov* on *Rosh* #68 to *Chullin*, chapter 3, 66b #5) discusses the fascinating case of the poisonous *stinaks marinus*, a sea animal with scales and legs but no fins. He relates that when he was rabbi in Vienna, the scholar Rabbi Aharon Rofei; brought him a marine creature called the *stinaks marinus*, which is commonly found off the coast of Spain. It had a broad head, a spine, four legs, and scales, but no fins. He ponders whether this rule applies to sea creatures other than fish, and whether legs are considered a type of fin (in that both are used for locomotion). He concludes that it did not violate the talmudic principle because it is a new hybrid that did not exist yet in the time of the Talmud. This case continued to provide fodder for many subsequent rabbinic inquiries. There are essentially three flavors of opinion found in later authorities. Some say all sea creatures are permitted if they have fins and scales, and this rule is applicable to the *stinaks marinus* as well. Others say that although all sea creatures can be permitted, this principle of “all that have fins have scales” only applies to “fish.” Finally, there are those who hold that no legged sea creature can be permitted since the indicators of fins and scales only apply to “fish” (see note 5 above). See the *Talmudic Encyclopedia* 7:205-206 for a summary of the opinions. See also *Machzik Berakhah* (Chida) 83:7; *'Arukh Ha-shulchan, YD*, 83:5-12; *Torah lodaas, Shemini* 1997; *Minchat Chinukh* 155:1-2; *Peri Chadash, YD*, 83; *ha-Ketav ve-ha-kabbalah, Shemini*; *Kereti u-peleti, YD*, 83:2; *Keneset Yechezkel, Niddah* 51b; *Zayit Ra'anan* (by the author of the *Magen Avraham*), on *Yalkut Shimoni, Shemini*; *Kaf ha-Chaim, YD*, 83:15; *Shu"t Chaim Sh'aul* 2:19; and *'Al ha-daf, Niddah* 51b for more on this intriguing topic. It is likely that the *stinaks marinus* is not truly a sea creature, but rather a terrestrial lizard, the common skink (*Scincus scincus*; known in modern Hebrew as a *chomet* – see Chatam Sofer on *Chullin* 66b). I thank Rabbi Natan Slifkin for this identification.

One aspect addressed in the discussion of the *stinaks marinus* is whether it is conceivable that the Torah would permit a poisonous fish. This question may have resurfaced. In 1938 the first living coelacanth (pronounced “see-la-kanth”; scientifically classified as *Latimeria chalumnae*) was caught near the east coast of South Africa, and fourteen years later was found living off the Comoros Islands. On 18 September 1997 a second population of this strange, rare, “living fossil” fish, which had been thought extinct, was discovered off the coast of Indonesia (Peter Forey, “A Home from Home for Coelacanth,” *Nature*, 395 (24

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Although the rabbis have introduced secondary signs associated with the kashrut status of fish, relating to the structure of the head, spine, tail, and mode of reproduction, the principal criteria remain fins and scales. Therefore, it is first and foremost these criteria that must be carefully defined both scientifically and halakhically, and the others will be ignored in this presentation.

Science teaches us – and the Halakhah does not seem to disagree – that fins, the less significant kashrut indicator, are osseous organs that are homologous to the legs of mammals. Fish have two sets of fins; median or unpaired fins comprise the dorsal, anal, and caudal fins, while paired fins comprise pectoral and pelvic fins that are homologous to the pectoral and pelvic girdles of higher vertebrates.

September 1998): 319-20 and M.V. Erdmann, R.L. Caldwell & M.K. Moosa, “Indonesian ‘King of the Sea’ Discovered,” p. 335). (It is possible that the Indonesian find is a closely-related, but independent species, now being classified as *Latimeria menadoensis*; M.T. Holder, M.V. Erdmann, T.P. Wilcox, R.L. Caldwell, D.M. Hillis, “Two Living Species of Coelacanths?” *Proc. Natl. Acad. Sci. USA (PNAS)* [26 Oct. 1999] 96 [22]: 12616-20; *Science News*, 155:17 [24 April 1999]: 267). They are a strange species whose closest relatives are the lungfish found in freshwater in Australia, Africa, and South America. Prof. Roy L. Caldwell, of the University of California, Berkeley, one of the co-authors of the *Nature* and *PNAS* articles, offered the following information (personal telephone conversation, 14 October 1998): The coelacanth has numerous scales similar to those on the tarpon (*Megalops atlanticus* and *M. cyprinoides*) and it has fins. The scales are thick and lined with serrated rows of hardened toothpick-like pointed denticles. The coelacanth’s fins have an unusual bone structure that has led some to describe the movement of the fins as unlike the coordination seen in most fishes and akin to the way humans move their arms and legs. Although it would not be an accurate description, this movement could cause a casual observer to mistake the pectoral and pelvic fins for “leg-type” structures. The coelacanth has a fluid-filled cartilaginous tube for a backbone and lacks vertebrae. Its tiny brain is located in a skull with the only functional intracranial joint known to exist in a living animal. Its most distinctive feature is its trilobed tail, with its extra trunk and fin protruding from the middle. And, according to Prof. Caldwell, the fish has an extremely high concentration of urea and oil that would make it inedible and would probably cause one who ate it to get quite sick and develop severe diarrhea (although this has not been verified by actual experience and the fish is not poisonous).

Dr. James W. Atz (b. 1915), Curator Emeritus, Department of Herpetology and Ichthyology of the American Museum of Natural History, New York, an institution that has several coelacanth specimens, questions the description of the scales. He asserts that they are different in structure from those of all other living fish. Nonetheless, some of the smaller ones do fall off relatively easily, an important indicator of kosher scales (see below). This was confirmed by personal observation when Dr. Atz arranged for this author and his brother, Dr. Doni Zivotofsky, DVM, to inspect several of the coelacanths in the museum’s collection. This strange fish may raise some of the same issues discussed regarding the strange *stinaks marinus*.

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Scales, the crux of the halakhic discussion, are more difficult to define, both from the scientific and halakhic perspectives. Most fish have some sort of scale covering, but some species, like the catfish (family Ictaluridae)<sup>11</sup> and clingfish (family Gobiesocidae), have none.<sup>12</sup> This covering can assume varied forms and scientists recognize four general classes, and numerous subcategories,<sup>13</sup> of scales:<sup>14</sup>

1) *Placoid scales* (Figure 1A) are characteristic of Chondrichthyes (sharks and rays) and are considered the most “primitive” scale among living fish. They consist of a basal plate buried in the skin with a raised portion exposed. The individual scale is similar to a tooth, with which these scales are homologous, having a pulp cavity and tubules leading into the dentine. The scales provide hydrodynamic efficiency.

2) *Cosmoid scales* (Figure 1B) are present in some lungfish, fossil crossopterygians, other fossil fishes and on the coelacanth. They are similar to placoid scales.

3) *Ganoid scales* (Figure 1C) are present in fossil Paleoniscoids and Chondrostei (Polypteridae, Acipenseridae, Polyodontidae). They are found on the gars of North America, the bichirs of the Nile, and in modified form on the tails of sturgeon and American paddlefish. They are usually rhomboid shaped, each having an anterior, peg-like extension overlapped by the scale in front of it, and are modified cosmoid scales.

4) *Cycloid and ctenoid scales* (Figure 1D) share the same basic structure, consisting of a surface bony layer and a deeper fibrous layer. Cycloid and ctenoid scales are present in the *Teleostei*, the vast majority of bony fishes. Cycloid scales, mostly

11 In addition to the Ictaluridae, there are 33 more families of catfish with over 1,500 species. All are either naked or covered with bony plates, but not scales. Most eels, 19 families and 800-900 species, also lack scales. The exception is species of the family Anguillidae (about 16 species; the “freshwater eels”), which contains most of the commercial species of eels. They have imbedded cycloid scales. Sea creatures such as pipefish and seahorses (Syngnathidae, 215 species) and sea poachers (Agonidae, 44 species) lack scales but are covered with bony plates.

12 In general, scales provide some form of protection; therefore, fish that lack scales must gain some advantage from their absence. For example, bottom dwellers in moving water, such as sculpin, and cave and crevice dwellers, such as catfish and eel, lack scales. The bodies of the clingfish are covered by a thick layer of mucous.

13 See Clive D. Roberts, “Comparative Morphology of Spined Scales and their Phylogenetic Significance in the Teleostei,” *Bulletin of Marine Science*, 52:1 (1993): 60-113.

14 Dr. Atz (conversation, 24 March 2005) pointed out that this division into four classes is today recognized as woefully simplistic, failing to cover many of the known scale types. The pictures shown herein, along with other pictures and a clear explanation of the scale types, can be found at the Australian Museum online fish site, <http://www.amonline.net.au/fishes/what/scales/index.htm> (accessed 27 April 2006).

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present in more primitive bony fishes, are roughly round in shape, and lack the teeth or ctenii present on the posterior edge of ctenoid scales. In contrast, ctenoid scales have a patch of small teeth on the exposed rear part. Cycloid scales are found on trout, minnows and herring. They are quite thin compared to ganoid and cosmoid scales and lie in pockets of the dermis.<sup>15</sup> As cycloid and ctenoid scales grow, they develop growth rings similar to those found in trees that can be used to estimate the age of the fish.

In general, scales are lined up overlapping one another so that when running one's hands over the fish from front to back it will feel smooth, but when running them from back to front the scales will be felt, and might even be uprooted. This may even be an halakhic requirement according to *Tosafot* (Chullin 23a) and the Chatam Sofer (Niddah 51). Scales can be thin or thick, large<sup>16</sup> or small (for instance, tiny on the tuna, and microscopic on the freshwater eel), and can cover almost all of the fish's body or only parts of it.

The halakhic criteria for scales most likely do not exhibit a one-to-one correspondence with the scientific categorizations because the scientific categories were established based on various features, none of them necessarily related to the halakhic requirements. Thus it is necessary to ask: What is the halakhic definition of "scales"?

Firstly, in discussing scales, the Mishnah (Chullin 3.7; Chullin 59a) defines *kaskesset* as the pieces affixed to the body of the fish. Based on the biblical usage of the same word to describe Goliath's armor (1 Sam. 17:5), the Talmud (Chullin 66b) deduces that they are a type of "garment." The Ramban (Lev. 11:9), writing centuries later, elaborates on the definition by writing that scales are round and fingernail-like. However, the latter description, of the Ramban, seems to be the description of a typical scale rather than a list of the definitive requirements for a kosher scale.<sup>17</sup>

- 15 G.S. Helfman, B.B. Collette, & D.E. Facey, *The Diversity of Fishes* (Blackwell Science, 1997), pp. 33-34, and C.E. Bond, *Biology of Fishes* (W.B. Saunders Company, 1979), pp. 29-32.
- 16 In the tarpon (*Megalops cyprinoids*) they can be five cm. long and are used in jewelry. The largest fish scales are found on the Indian *mahseer* (*Tor tor*), a gamefish species of carp or minnow (*Cypridae*), which reaches 43 kg. and has scales the size of the palm of a human hand (See Helfman et al., p. 34).
- 17 *Shu"t Tzemach Tzedek* (no. 61) has a lengthy discussion about the kashrut of long, needle-like scales that peel off (possibly ones similar to those on the blue marlin). While he is ambivalent about the kosher status of those spikes, there seems to be a significant range between "round like fingernails" and spikes, and it is reasonable to suggest that oddly-shaped, flat scales are indeed acceptable.



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Secondly, for a scale to be halakhically acceptable, it must be possible to peel it off of the skin. This notion, that not everything attached to the skin of a fish is an halakhic scale, is first stated explicitly in the Ramban's commentary on the Torah (Lev. 11:9). The Ramban explains that when the Talmud states that scales are attached to the body of the fish, it does not mean permanently attached, it is merely contrasting scales that are stationary to fins that move. However, he states, scales by definition must be removable. The Ramban, realizing that this point may not be obvious, elaborates further by pointing out that when the *Tosefta* and Talmud state that scales are like garments, this means that they are removable. Furthermore, the Ramban observes that when Onkelos, on Leviticus 11:9-10, translates *kaskeset* as *kalfin*, it means that the scales are like the *klipa* (bark) of a tree and (the peel) of a fruit. In a similar vein, the *Tiferet Yisrael* (Chullin 3:96) derives the peelability requirement from the Mishnah's description of the scales as "affixed." He explains that "affixed" means attached to, but not integrated into, the body of the fish, and deduces from this that one must be able to remove the scales without damaging the fish. This is unlike most reptile scales that are not separate, detachable structures and are rather connected in a "sheet," which is the outermost layer of their skin and is part of the dermis. Fish scales usually originate in the epidermis.

Surprisingly, this requirement, which is central to the swordfish debate, is not found in the *Tur* and, while the *Beit Yosef* mentioned it in his commentary to the *Tur*, he neglected to include it in the *Shulhan Arukh*. Likewise, the Rambam does not include it in *Hilkhot Ma'akhalot Assurot* 1:24, although the *Maggid Mishneh*, commenting on the Rambam (ibid., s.v. *u-ve-dagim*), includes this peelability requirement and heroically attempts to find an allusion to it in the language of the Rambam. The Gaon of Vilna (*Yore Deah* [henceforth, *YD*], 83:1) agrees that this is an ancient requirement and finds its source in the *Tosefta* (Chullin, 3), which defines *kaskeset* as a garment. This rule is finally codified by the Rama (*YD*, 83:1), and is then universally accepted.

The *Zivche Tzedek* (*YD*, 83:2) observes that no one in his period disputed this requirement. However, there were those who expressed reluctance at accepting it. Thus, the *Nodeh be-Yehudah* (*Tinyana*, *YD*, 28) refers to it as originating with the Ramban, and states that if anyone else had innovated it he would have disputed the point. The *Nodeh be-Yehudah* adds that this rule is found nowhere in the *Bavli*, *Yerushalmi*, or *Torat Kohanim*, and suggests that these sources might actually imply the exact opposite. For example, the *Nodeh be-Yehudah* cites *Avodah Zara* 39a as indicating that scales need not be peelable. In addition, the *Teshuvah Me-ahavah* (3:329) argues that, based on *Targum Yonatan* (Lev. 13:2), there is no proof for the

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Ramban's position from Onkelos' use of the word *kalfin*.

According to the Ramban and the accepted Halakhah, the scales do not need to be exceedingly loose, only peelable. Thus, even if the removal of the scales leaves an imprint, they still fulfill the requirement, as long as their removal does not actually damage the underlying skin. In contrast, non-kosher fish scales are integral to the skin and their removal damages it. Halakhic scales may be removed either by hand or with a scraping instrument that does not tear the skin.<sup>18</sup> Even if soaking in hot water is required in order to loosen them, some *posekim* still define such scales as peelable (e.g. *Nodeh be-Yehudah*, *Tinyana*, YD, no. 28).<sup>19</sup> Because it is not always clear from a visual inspection whether the scales will meet this requirement, actually removing them in order to determine whether the fish is kosher is often necessary.

18 Rama, YD, 83:1 and *Pitche teshuvah*, YD, 83:1.

19 This responsum created a furor. See for example *Shu"t Kol mevasser* 2:19, which cited *Shu"t Har Hamor* (Rabbi Mordechai Bennet, Chief Rabbi of Moravia):12 as violently disagreeing with this ruling and explaining that those, including the Ramban, who relied on boiling the fish to test for peelability required that the scales come off on their own in the water, not that they become peelable after being boiled. Rabbi Bennet argued similarly in his *Shu"t Parshat Mordechai*, YD, 4. Similarly *Shu"t Bigde kehunah*, YD, 4, and *Shu"t Ketav Sofer*, YD, 45 disagreed with this leniency. The furor erupted when, on the day after Yom Kippur 5542 (1782), the *Nodeh be-Yehudah* (Rabbi Yechezkel Landau of Prague) received a fish in the mail from his friend Rabbi Tzvi Hirsch Segal, rabbi of Tamshover. Rabbi Segal explained that in his community they had been refraining from eating the fish, the *shtirel*, for generations, but no one knew why. He asked the *Nodeh be-Yehudah* to examine it. He did, and discovered two rows of initially non-peelable scales on each side. After soaking the fish in various solutions (possibly alkali) for three hours, the scales became peelable. Aaron Chorin of Hungary defended the *Nodeh be-Yehudah* in two pamphlets, *Imre no'am* (lit. "Words of Pleasantness," 1798) and *Shirion kaskasim* (lit. "Coat of Mail," 1799). Rabbi Isaac Kriegshaber of Paks (Paksh), Hungary shot back with a responsum signed by many rabbis declaring such a fish non-kosher and published the responsum as *Makel no'am* (lit. "Staff of Pleasantness"). The argument reached the point where Rabbi Kriegshaber claimed that those who were lenient should be suspected of following Shabbetai Zvi. Rabbi Kriegshaber claimed the *Nodeh be-Yehudah* had changed his mind and had asked him to publicize this fact; the *Nodeh be-Yehudah*'s son, Rav Shmuel, called Rabbi Kriegshaber a liar. The rabbinate in Prague under Rabbi Elazar Fleckeles officially adopted the position of the *Nodeh be-Yehudah* (*Teshuva me-ahavah* 3:329).

The author of *Shu"t kol mevasser* inspected a fish from Eilat that could not have its scales peeled off without the skin being damaged unless the fish was first placed in boiling water for an hour and a half. He declared the fish non-kosher. The name of the fish in Hebrew was, quite literally, "pig fish." It is unlikely he was dealing with the so-called porkfish (*Anisotremus virginicus*) because it is usually not found near Eilat and it has kosher scales. Cf. *Sho'el u-meshiv kamma* 3:54, *Maharsham* 4:94, and *Teshuvah me-ahavah*, YD, 329.

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*She'elot U-teshuvot* (henceforth, *Shu''t*) *Har Hamor* (no.12, written by Rabbi Mordechai Bennet, Chief Rabbi of Moravia) explains the Ramban's requirement of peelability to mean that the scale has a loose end, a flap, and is not attached to skin around the whole circumference. Maharsham, 4:94, rejects this inference.

Thirdly, two further rules concerning fish scales relate to when a kosher fish must have scales. The first rule dictates that a fish that has scales in the water, but sheds them on being removed from the water, meets the requirement of having scales. The second mandates that a fish having no scales in its juvenile stage but growing them later in life is kosher.<sup>20</sup>

The former rule is discussed in the Talmud, *Avodah Zara* 39a, which states that fish that have scales in the water but leave them behind on being removed from the water<sup>21</sup> are kosher. The Talmud gives several examples, including the "mackerel." One of the examples, "atunus," is translated by the *'Arukh Ha-shalem* as the "Thon Fiseh," most likely referring to the tuna fish.<sup>22,23</sup> Other scaleless fish also had a

Note that there are many fish named after animals, including the alligator, boar, buffalo, goat, goose, eagle, wolf, and zebra fish – to name but a few.

20 *Tosefta* Chullin 3.26 (Zuckerman); Chullin 66a; *Avodah Zara* 39a; *MT, Hilkhot Ma'akhalot Assurot* 1:24; *SA, YD*, 83:1.

21 This discussion will proceed using the Talmud's assumption that such fish actually exist. It should be noted, however, that contemporary ichthyologists treat the notion of a fish shedding all its scales on removal from the water as a myth. Dr. James Atz has stressed that it is highly unlikely that there is any fish that has scales while in the water and, on being landed, is completely naked. He suggested that this "myth" might have originated from herring-type fish caught in nets that pulled off most of their scales. However, it is quite interesting that, as will be discussed below, both the Talmud and the *Knesset haGedolah* apply this principle to a fish that can today likely be identified as the swordfish, yet the *Knesset haGedolah* does so independently, without linking his ruling to the statement found in the Talmud. If this is merely a myth, then it is quite ironic that he applied it to the same fish without basing it on the earlier ruling. This seems to lend credence to some factual basis for the assertion. The notion persisted, and Rabbi Barukh ha-Levi Epstein, author of the *Torah Temimah*, in his *Tosefet berakhah* (p. 66) on Lev. 11:9 quotes the famed 19th-century rabbi and zoologist Ludwig Lewysohn (1819-1901) as listing several species of fish, including swordfish, which leave their scales behind in the water. Rabbi M.D. Tandler (*Jewish Observer*, April 1968: 14) quotes Rabbi Zushe Waltner of (5679[1919]-5763[2003]) Tangiers, Morocco as asserting that he investigated this matter with fisherman who all concurred that they had never found any swordfish scales on the fish, in the net, or in the immediate vicinity. For Rabbi Waltner's complete discussion and the letter he received from the oceanographic institute, see *ha-Pardes*, 40: 5 (*Shevat* 5726 / Feb. 1966): 19-20. He states that the local rabbis had prohibited swordfish and he leans that way as well.

22 On this fish see Rabbi Yehoshua Moshe Aharonson, *Yeshu'at Moshe* 3:67. He notes that this is an example where names alone cannot be relied upon. See also *Menachem meshiv* (no. 31) where "thon fish" is categorized as a type of "Mackrilin."

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tradition of shedding their scales when caught, and, therefore, they were also treated as kosher (*Darke Teshuvah*, 83:17). The Rambam (*Commentary on the Mishnah*,

It is worth emphasizing that in any discussion of the kashrut of fish, common names cannot be relied upon as a means of identification. The fish called a cod in New Zealand has nothing to do with the European and North American codfish. The name perch is applied to at least a dozen different species, as is the seemingly unique name “Jew-fish” (see R.G. Gould & J. W. Atz, “The Trouble with ‘Jewfish’ or What’s in a Name,” *Tropical Fish Hobbyist*, 44:12 [August 1996]: 172-82). The dolphin, a mammal, is clearly not kosher, yet the dolphin fish (*Coryphaena species*) is kosher. Salmon is a common kosher fish; rock salmon, also known as Atlantic wolfish, is not kosher. The trickiness of ruling on fish without a fish present is illustrated by the example of *Siganus*, family Siganidae, popularly known as rabbitfish. The family Siganidae comprises 27 species, mostly tropical Indo-West Pacific. Many of the species are important food fish, with 15,700-25,800 tons per year taken in the western Pacific from 1990-95. All have minute scales on the body and some species also have larger scales on their cheeks. Each species would have to be examined to determine if the “minute” scales are too small for rabbitfish to be kosher. An examination of several species (18 April 2005) by this author and Dr. Daniel Golani at the Hebrew University collection revealed scales large enough to be kosher on all those examined. There are two species that have moved from the Red Sea and are now found in the Mediterranean. Rabbi I.M. Levinger wrote (*Modern Food Production from Animal Source* [Hebrew], 1985, p. 151), based on an examination of museum specimens in San Francisco and Jerusalem, that it is kosher; yet he recently reversed his position, stating that they are non-kosher (Lecture in Jerusalem on 13 May 2003). The problem with relying on common names applies to animals and birds as well. See Ari Z. Zivotofsky, “Is Turkey Kosher?” *The Journal of Halacha and Contemporary Society*, 35 (Spring 1998):79-110.

- 23 The issue of the kashrut of canned tuna that periodically resurfaces, and is also often linked to Rabbi M.D. Tendler, is not related to the issues being discussed here. Rather, it relates to the trustworthiness of the packing plants in removing other sea creatures that are caught along with the tuna and the halakhic need for a “*mashgiach t’midi*.” For a discussion of this issue see the two articles in the OU journal, *Mesorah*, 1 (*Nissan* 5749): 66-76 (by Rabbi Herschel Schachter), 77-83 (by Rabbi Haim Tuvia ha-Cohen Chernoff) and the article by Rabbi Yisrael Belsky in *Hamativta* (1986): 88-97. A list of many of the articles on this topic can be found at the beginning of Rabbi Yehudah David Bleich’s Hebrew article in *Ohr ha-Mizrach* (*Tevet* 5749): 130-50, and an English treatment can be found in Rabbi Herschel Schachter’s article in the *Journal of Halacha and Contemporary Society*, XV (Spring 1988): 7-24. More recent thorough treatments can be found in Rabbi Avraham David Moskowitz’s *Netivot ha-Kashrut* (Belz), 17 (5763): 99-117 and *idem*, *Or Yisrael* (*Tishrei* 5764) 9:1 [33]: 81-94. Rabbi Moshe Feinstein expresses his reluctance to rely on spot checks in the case of canned fish (*Iggerot Moshe*, *YD*, 2:8, 4:1). There is no question regarding the presence of scales on tuna. All tuna (and mackerels and bonitos) have scales, albeit they are often small and sparse. The extent of scale cover varies among species. Regarding the extent of scale cover see “Corselet and Squamation,” in B.B. Collette (1979): 21 and 24; “Adaptations and Systematics of the Mackerels and Tunas,” *The Physiological Ecology of Tunas*, ed. G.D. Sharp & A.E. Dizon (New York: Academic Press, 1979), pp. 7-39. Briefly, primitive *scombrids* (mackerels and Spanish mackerels) are covered with

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end of mishna *Chullin* 3) states that many fish lose their scales on being landed. Possible examples might be the kosher anchovies and herrings, fish with very deciduous scales that fall off when the fish hits a seine or a trawl.<sup>24</sup>

The assertion that kosher status depends upon the anatomy of the fully matured organism is also found in a different category. Halakhah declares kosher a young *chagav* (locust) that lacks one of the requisite signs (e.g. two jumping legs, four legs, wings covering the majority of the body) but which will eventually grow them (*Chullin* 65a; *MT, Hilkhhot Ma'akhalot Assurot* 1:23; *SA, YD*, 85:1). This is analogous to the case of a fish that will eventually grow scales.

Finally, an important case for the topic of this paper and not mentioned in the Talmud or Codes, is that of a fish that has scales and loses them as it matures. The phrase from which some wish to derive the rule concerning this fish is found in the *Tosefta* (*Chullin* 3.26 [Zuckerman]) and is codified in the *Shulhan Arukh* (*YD*, no. 83:2):<sup>25</sup> “It [the fish] had them [scales] while in the water and shed them *immediately* upon being raised to land.” The deduction might be made that this implies that only fish that have kosher scales the entire time they are in the water

uniform-sized scales, whereas more advanced scombrids (bonitos and tuna) have the anterior scales enlarged and modified into a so-called “corselet.” The species of *Auxis* (frigate tunas), *Euthynnus* (little tunas), and *Katsuwonus* (skipjack) are naked posterior to the corselet (not including the scales along the lateral line). The bodies of the eight species of tuna (*Thunnus*) are covered with small scales. As noted above, all of these meet the halakhic requirements.

24 Debates about traditions regarding fish that lose scales are old and widespread. The eleventh-century Palestinian Karaite, Levi ben Yefet ha-Levi, permitted the *kena'at* fish based on its having scales in the water (*Sefer ha-Mizvot*, ed. Yosef Algamil [Ashdod, 5762], Vol. 3, p. 621). The last major Karaite halakhic authority, Eliyahu Bashyatzi (1420?-90), in his *Aderet Eliyahu* (Chapter 23, reprinted in 1966), observed that there were many fish about which there was such a tradition. However, when residents of Constantinople sought to permit “the large, round fish,” the *tcheki*, based on this claim he, together with a large entourage, went to the docks to investigate. They investigated over one hundred fish and neither he nor those anxious to permit the fish found even one scale; the decree went out to ban the fish. In a more recently discovered document, what appears to be the same story is reported as having taken place on 20 *Iyar* 1480 at Dercos (a day’s journey from Constantinople) on the European coast of the Black Sea (reported by Abraham Danon, “The Karaites in European Turkey,” *Jewish Quarterly Review*, 15 [1924-25]: 285-360, specifically p. 314). See also *Jewish Quarterly Review*, 17:179-80 for the original text of the document. Danon conjectures that the fish under discussion was the brill (others have suggested a flat fish related to the turbot), and reports that a similar debate is said to have occurred in 1547. I thank Prof. Daniel J. Lasker for these references. On Bashyatzi see *Hebrew Encyclopedia* 6:960-63.

25 See also *Sefer ha-Chinukh* 155.

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are acceptable.<sup>26</sup> However, this deduction is problematic. Why should this type of fish be any different from the talmudic example of a kosher fish that grows scales later in life; it too only has kosher scales part of its time in the water. In addition, such a ruling would create the unacceptable situation of sometimes making kashrut determination impossible. A person catching a fish with scales could never be sure it was truly a kosher species because he would always have to be wary that it would have lost its scales later in life had it remained in the water.<sup>27</sup> The *chagav* analog that could be used to discuss this case would be a *chagav* that has all the indicia in an early phase and loses them as it matures. Unfortunately, the sources do not discuss this case either.<sup>28</sup>

The difficulties in deciding the law in this case notwithstanding, the question of fish that lose scales as they mature was addressed in the 1934 list of kosher fish published by the Agudat ha-Rabbonim.<sup>29</sup> Paddlefish (*Polyodon spathula*) appeared on the list and had an accompanying note (in Hebrew) declaring: “It has scales in its youth, but as it grows it loses the scales, and the law is that it is kosher.” Of interest here is the halakhic principle and not the surprising statement regarding paddlefish and their inclusion in the list.<sup>30</sup>

- 26 A similar question regards fish whose scales are at first acceptable (peelable) and later become unacceptable (non-peelable) as the fish matures. The scales of the blue marlin (*Makaira nigricans*) and the shortbill spearfish (*Tetrapturus Agustirostris*) transform from typical, round, overlapping scales at body length of 17-55 cm. to unusual pointy barbs at body length 160-170 cm. Some authorities have questioned the acceptability of these later scales and thus this discussion might be applicable to them as well.
- 27 The suggestion that it is kosher part of its life and then becomes non-kosher on losing its scales is even more problematic and unprecedented.
- 28 There is of course no parallel case in *chagavim* to the fish losing its scales as it leaves the water. *Tosafot* (Chullin 65a, s.v. *af 'al pi*) compares the use of the word *lo* regarding *chagavim* to its use for walled cities, where even though the identifying features of the walled city are lost, they are still classified as walled cities.
- 29 *Ha-Pardes*, 8:9 (1934):17-21.
- 30 Paddlefish are essentially naked except for patches of minute ganoid scales. It is commonly sold in the United States and is similar to sturgeon. There are two types of fish sold under the name paddlefish. The *Psephurus gladius*, known commonly as the Chinese swordfish or the Chinese paddlefish, and *Polyodon spathula*, known commonly as paddlefish, American paddlefish, or spoonbilled sturgeon. The OU lists the second as non-kosher and does not mention the former, a carnivore that is nearly extinct. The paddlefish is a cartilaginous, rather than a bony, fish, an indication that it may not be kosher. It is commercially raised in large numbers both in the United States (by Osage Fisheries, MO) and in Israel. The controversial Ginsburg list discussed below lists *Polyodon spathula* as a fish with scales and hence classifies it as kosher. Paddlefish certainly do not lose scales,

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As will be discussed below, it was claimed that swordfish had scales “to some stage beyond four feet,” and then lost them as they continued to grow.<sup>31</sup> A fish of this size might certainly be fished for food while it had scales, but, according to this halakhic argument, would be non-kosher after later losing these scales if it remained in the water. Some authors have linked the entire swordfish question to this last principle, as illustrated by the statement: “Some fish have fins and scales but lose them at some point. Orthodox authorities do not permit the use of such fish (swordfish and sturgeon<sup>32</sup>), but some Conservative authorities permit their use.”<sup>33</sup>

Thus, a fish that has scales and loses them as it matures would seem to be kosher based on logic, on the ruling of the Agudat ha-Rabbonim in 1934, and so seems to have ruled the Chatam Sofer (*YD* 74). And so ruled Rav Avigdor Nebentzal and Rav Zalman Nechemia Goldberg (personal communications, 5762).

To sum up, for fish scales to be halakhically kosher scales, they must be removable – peelable – such that their removal does not damage the fish’s skin; they may be shed when the fish is removed from the water; they may be grown only in the fish’s adult stage; and, subject to dispute, fish that have juvenile scales which are lost in the adult stage are kosher.

Concerning the relationship of the halakhic categories to scientific ones, it is important to note, before concluding this topic, that, regarding the peelability requirement, it has been suggested<sup>34</sup> that halakhic scales are a subcategory of what ichthyologists define as scales, and include cycloid and ctenoid scales, but exclude placoid and ganoid scales. This kind of blanket correspondence is problematic, because, as noted above, the scientific categories were not established based on halakhic requirements. For example, a difficulty with this analysis is highlighted

and, in general, paddlefish grow more scales as they age. However, the scales would seem to be not kosher.

31 G.F. Arata, Jr. “A Contribution to the Life History of the Swordfish, *Xiphias gladius* Linnaeus, from the South Atlantic Coast of the United States and the Gulf of Mexico,” *Bull. Mar. Sci. Gulf Caribb*, 4(3) (September 1954):183-243. Quote found on page 215.

32 Sturgeon do not lose their scales. The several-hundred-year controversy surrounding sturgeon relates solely to the acceptability of their quite permanent “scales.”

33 Alfred J. Kolatch. *The Jewish Book of Why* (1985), page 89.

34 Rabbi Tendler, 1951, OU list of kosher fish; Rabbi Tendler, *ha-Pardes*, 40:4 (1966):18, which is a reprint of a 1962 letter he sent to Rabbi Tchorch. To the best of my knowledge, Rabbi M.D. Tendler was the first to make the association under discussion between the various scientific categories and the halakhic requirement. This association has since been widely disseminated to the point where it is treated as a binding halakhic statement – often presented without citation.

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by a passage in a standard fish text:<sup>35</sup> “Some scales, usually cycloid, are deciduous, that is, they lie in shallow pockets and are easily rubbed off, as in the shiner (*Notropis*) and the smelt (*Osmerus*); others, especially ctenoid scales, are more deeply embedded and difficult to remove, as in the yellow pikeperch (*Stizostedion*).”<sup>36</sup> In this text, ctenoid is cited as the example of a difficult-to-remove scale, albeit scales removable from a kosher fish! In addition, it is impossible to categorically reject ganoid scales, because great halakhic authorities over the last two hundred years have accepted them.<sup>37</sup> Even more problematic is the statement that all cycloid scales are kosher. There are counter examples. The burbot (*Lota lota*) has deeply embedded, very small, cycloid scales, making it non-kosher.<sup>38</sup> The sixteen eels of the family Anguillidae also have embedded cycloid scales that are probably non-kosher. And there can certainly be fish with microscopic ctenoid scales. In summary, the biological world is never neatly classifiable, and all phenomena appear along a continuum. It thus seems imprudent to try to pigeonhole halakhic classifications into arbitrary scientific ones. While it is certainly true that the vast majority of cycloid and ctenoid scales are kosher and ganoid scales are not, there most definitely can be counter examples. For kashrut purposes, the scales on each fish must be examined with the halakhic, and only the halakhic, guidelines in mind.<sup>39</sup>

Another halakhic category that might be crucial in determining the kashrut of fish is the question of the *mesorah*, tradition. Can fish, like birds, be declared kosher because there is a tradition concerning them? For instance, if certain communities eat swordfish, is this sufficient to establish them as kosher even if they do not appear to possess the kosher signs? The majority opinion is that, unlike the halakhah concerning birds, and in contradistinction to Rabbi Unterman’s claim mentioned below, *mesorah* can neither forbid nor permit fish. If presented with a

35 Margaret E. Brown (ed.), *The Physiology of Fishes*, Vol. 1. (Academic Press, 1957), pp. 231-32.

36 Note that, today, pikeperch are placed in the genus *Sander* not *Stizostedion*.

37 See the *Talmudic Encyclopedia* entry on fish (s.v. *dagim*), notes 100-105 and Levinger, p. 112 n. 2.

38 For years it appeared on the OU list of kosher fish and still appears on other kosher lists. For example see: <http://www.mk.ac/kosher.php>.

39 An interesting side note is that some fish may have two types of scales. For example, certain flatfish (flounders, soles, etc.) have ctenoid scales on the eyed side of the body and cycloid ones on the blind side. In some fish this phenomenon is sex-linked. In some species of flatfish the males have ctenoid and the females cycloid scales. With possibly one exception (turbot – *Psetta maxima*), all known flatfish have kosher scales.



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fish, the *posek* need only verify that it meets the physical requirements outlined in the Torah for it to be kosher, and their absence is what renders it non-kosher.<sup>40</sup>

This is not to imply that tradition plays no role in determining the kosher status of a fish. Clearly, the basis of the indicators themselves is rooted in oral tradition. Thus, *Tosafot* (Niddah 51b, s.v. *ve-likhtov*) points out that the definition of the anomalous word *kaskeset* is based on a tradition, without which its definition would be unknown. And, indeed, it seems that notwithstanding this ruling, in the give and take of the halakhic *process*, even if not in its resolution, a long-standing tradition plays some role. As will be seen in the next section, all parties to the halakhic debate regarding swordfish cited and dealt with the *Knesset haGedolah*, even though many of them claimed that in the final analysis his position had no bearing on the matter at hand. They could not wantonly ignore his legal precedent and the tradition that he established.

THE KASHRUT OF SWORDFISH BEFORE THE 1950s

Many classical sources declared some sort of “swordfish” to be kosher, and their position seems to have gone unchallenged until the 1950s. The earliest and most famous source to explicitly declare the “swordfish” kosher was the renowned Sephardic *posek*, Rabbi Chaim ben Yisrael Benvenisti (1603-73), the *Knesset haGedolah*. His statement became central to all later halakhic debate concerning the swordfish. He wrote:

It is a widespread custom among all Jews to eat the “fish with the sword” (*dag ba'al ha-Cherev*), known in vernacular as *fishai ispada*,<sup>41</sup> even though

- 40 See *Avoda Zarah* 39-40 and *Shu"t zikhron Yehudah*, n. 32 (by Rabbi Yehudah ben ha-Rosh, b. 1270) who says this explicitly. See also *Maharsha* on bPes 49b; *Menachem meshiv* n. 31; *Minchat Yitzchak* 3:71; and *Darkei Teshuvah*, YD, 83:4, who cites *Teshuvat bet Shelomoh*, all saying the same thing. There is a minority, dissenting opinion on this issue. See *Avoda Zarah* 35b where close resemblance of different species led to real confusion and even to talmudic bans on certain types of fish. See Rashi, *ibid.*, s.v. *ve-ha-Chilik*. See Rabbi Yisrael Belsky, *Hamativta* (5746/1986): 88-97 on this ban, his opinion that secondary signs and recognition of the species (*tevi'at ayin*) are not sufficient and his strong difference of opinion with the son of the Chelkat Yaakov (*Chelkat Yaakov* 3:10), who opined otherwise. See also bSuk 18a. See also the *Bigde kehunah* cited in the *Pitche teshuvah*, YD, 83:1, who postulates that once the Jewish people treat a species as non-kosher it cannot later “become” kosher. Fins and scales are searched for in new or unknown species, not in previously banned ones.
- 41 The *Knesset Gedolah* lived in Turkey, and swordfish is called *kilic* in Turkish. However, he – like many Jews of Constantinople – probably still spoke Greek, or another Mediterranean language. In several modern locales the name for swordfish is: *pesce espada* (Algeria),

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it does not have scales because it is said that when it comes out of the water, due to its anger, it shakes and the scales are thrown off.<sup>42</sup>

He further reports that his grandfather<sup>43</sup> had confirmed this by experimentation. Thus, the *Knesset haGedolah* acknowledges that a landed swordfish appears to be scaleless; nonetheless, he rules that it is kosher.

The *Knesset haGedolah*'s halakhic statement is widely cited as authoritative and reliable by a host of classical authorities.<sup>44</sup> For example, it is mentioned by the *Peri Meggadim* (*Siftef Da'at*, 83:2); the *'Ikre Dinim* (a.k.a. *Ikre Ha-tsa'ir*, Daniel Tirni, of Florence, Italy), *YD* 8:4; the *Darke Teshuvah*, *YD*, 83:17; the *Hida* (Haim Yosef David Azul'ai, of Hevron, Israel [1724-1806]), *MaChzike Berakha*, *YD*, 83:3; the *Zivche Tzedek*, *YD*, 83:8; the *Kaf ha-Chaim*, *YD*, 83:9; and *Kemach Solet*, p. 95, no. 24 (written by Rabbi Yehudah Eli, originally published in Solonika, 5558[1798],<sup>45</sup> republished 1998).

The *Me'am Lo'ez*<sup>46</sup> similarly states: "it is customary to eat the fish called *fishai ishpada* (fish with the sword), that we call 'fisyo' even though we see no scales

*xiphias* (Greece), *pesce spada* (Italy), *pes espada* (Spain), *pesce espada* or *boussif* (Tunisia), *épée de mer* (France), *zwarrd-fish* (Dutch) or *schwertfisch* (German).

- 42 As noted above, every ichthyologist I have discussed this with has balked at this assertion. While there are fish that can lose many of their scales in the net, as noted above regarding the anchovy and herring family, they are incredulous about any "fish with a sword" losing its scales or any fish losing all of its scales.
- 43 In some of the works that quote the *Knesset haGedolah*, such as the *Darke Teshuvah*, the title of the one who confirmed the falling off of the scales is abbreviated to *mem'resh*, standing for *mori rabi* (my master, my teacher). However, in the *Knesset haGedolah* itself the abbreviation is *mem'zayin*, standing for *mori zekani* (my master, my grandfather). This is confirmed as the correct reading by the explicit report of the *Me'am lo'ez*, quoted below, as well as by the responsum of the *Knesset haGedolah* (*Ba'ei Chayyei*, *YD*, 125; based on the 1788 version, the earliest I was able to find) where it is written out as *mori zekani*. Although Rabbi Tendler (*Jewish Observer*, April 1968: 14) wrote simply "my teacher," that is because he was quoting the same source as Rabbi Klein (see below), the *Darke Teshuvah*.
- 44 All of these authorities cite it without the slightest hint of any disagreement.
- 45 However, he was not from Solonika; he was from Nish, the second largest city in Serbia, located on the banks of the Nishava River at the intersection of routes linking the Danube, Adriatic, Aegean and Black Seas.
- 46 Rabbi Yaakov Culi (Constantinople, 1689-1732) on Lev. 11:9-12; page 122 in the standard Hebrew edition. Actually, he completed only Genesis and part of Exodus, but left voluminous notes, and these were incorporated into the continuation. Rabbi Yitzhak Magriso completed Exodus in 1746, Leviticus in 1753, and Numbers in 1764. Deuteronomy was finished by Rabbi Yitzhak Bechor Agruti in 1772. These latter sages followed Rabbi Culi's style so closely, that the entire set is usually considered a single integral work.

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when it is landed.” He explains that it loses its scales during the fight and that this was proven to a skeptical vizier by the *Knesset haGedolah*’s grandfather, Rabbi Moses Benvenisti, who placed a black garment<sup>47</sup> in the fishing net and, on landing the fish, pointed out the many scales on the garment.

Even though all of the authorities just cited clearly base their rulings on the *Knesset haGedolah*, nonetheless, they each may be counted as independent sources, and not just as students, because each authority independently supported the *Knesset haGedolah*’s ruling. More importantly, each confirmed the widespread custom of the swordfish being eaten at his time and in his place.

Approaching the era of our debate, in 1933, under the presidency of the renowned Rabbi Eliezer Silver<sup>48</sup> (1882-1968), the Agudat ha-Rabbonim of the United States and Canada published<sup>49</sup> a list of kosher fish, in which they included the swordfish, identified as *Xiphias gladius*, as well as two types of sturgeon and turbot. The list was reprinted<sup>50</sup> and defended the following year when Rabbi Yosef Kanowitz<sup>51</sup> was the president of the Agudat ha-Rabbonim. The only questions raised against the initial list concerned the two types of sturgeon,<sup>52</sup> and their inclusion, was defended by arguing that the sturgeon in America is different from that in Europe.<sup>53</sup> It is significant that there was no question raised regarding the inclusion of swordfish, despite the fact that the detractors were eager to attack the list.

47 See *Ikre dinim*, YD, 8:4 regarding the color of the cloth and of the scales.

48 See *Encyclopaedia Judaica* 14:1544-45 and Aaron Rakeffet-Rothkoff, *The Silver Era in American Orthodoxy: Rabbi Eliezer Silver and His Generation* (Feldheim, 1981).

49 *Ha-Pardes*, 7:1 (Nissan 5693/April 1933): 15-17.

50 *Ha-Pardes*, 8:9 (1934):17-21.

51 Also spelled Konvitz. The son-in-law of the Ridvaz (Rabbi Jacob David Willowski), he was born in 1878 in Lithuania, taught in Safed, served as rabbi in several New Jersey cities, and died in 1944. For more on him see Milton R. Konvitz, “Rabbi Joseph Konvitz: A Son’s Memoir,” *The Torah U-Madda Journal*, 8(1998-99): 151-80.

52 The inclusion of eel in the original list was questioned, and it was deleted in the second list, but not because of a retraction, but because, it was stated, of possible confusion between a kosher type of eel and a non-kosher type. The questions surrounding sturgeon, a centuries-old issue, as well as the eel problem, will not be discussed here. An ancillary issue with sturgeon involves the use of its swim bladder to make isinglass, a clarifier used in the production of beer. On this see *Nodeh be-Yehudah, Kamma*, YD, 26. On the eel, as well as microscopic scales and the role of *mesorah* in fish, see the article by former Sephardic Chief Rabbi of Israel, Rabbi Eliyahu Bakshi-Daron, “Kashrut of the Eel with Scales,” [Hebrew] *Techumim*, 7:457-63.

53 One of the United States sturgeons, *Acipenser oxyrhynchus*, is actually very similar to the European *Acipenser sturio* and is considered to be conspecific with it by some authors. Other American and European species are different, but all have the controversial massive bony plates.

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The challenge to the Agudat ha-Rabbonim came from an outside organization, the OK Laboratories, which printed a strongly-worded attack in the July-August 1935 issue (pp. 28-29) of its *Kosher Food Guide*.<sup>54</sup> The article bristled with hostility, stating that the list appeared in “a so-called Rabbinical Monthly.” However, the only two items targeted for criticism were the eel and the sturgeon. Apparently, even OK Laboratories found nothing wrong with the inclusion of swordfish among the approved fish species.

In the early 1960s, even as the modern debate over the kashrut of the swordfish got underway, a leading halakhic authority in Boston, Massachusetts, Rabbi Mordechai Savitsky, publicly declared during the course of a *Shabbat HaGadol* sermon that swordfish is kosher. According to his son, Rabbi Moshe Yaakov Savitsky,<sup>55</sup> his father’s position was well known. Although Rabbi Savitsky was known to have visited the Boston docks to examine swordfish, his position was supposedly not based on personal observation but on the opinion of the *Knesset haGedolah*.

#### QUESTIONING THE KASHRUT OF SWORDFISH

In a 1951 list of kosher fish prepared for the OU, Rabbi Moshe David Tendler, born in 1926, with a Ph.D. in microbiology from Columbia University, and son-in-law of Rabbi Moshe Feinstein, became the first authority known to this author to question the accepted swordfish tradition by including it in the list of “common non-kosher ‘sea food’ sold in the United States.”<sup>56</sup> Several years later, when Rabbi

- 54 This was the second issue of their *Kosher Food Guide* edited by the founder of the OK, Abraham Goldstein. Over 48,000 copies of the first issue were distributed! Rabbi Goldstein had previously been the chairman of the OU Kashrut Committee. In that capacity he had written in *The Orthodox Union*, 1:6 (Jan./Feb. 1934): 7 that “sturgeon is trefa” and that “there are trefa smoked fish as sturgeon and eels.” Thus, in 1934, he had stated his opinion regarding these two sea creatures. Interestingly, a few months earlier (*The Orthodox Union*, 1:1 [Aug 1933]: 5) he refused to take a stand on a different fish. When asked about the kosher status of tuna, he responded: “Inquiries regarding tuna fish should be addressed to the Dept. of Fisheries, Washington, D.C.” It seems that for some reason he did not want to take an official position on tuna.
- 55 Telephone conversation, 30 July 2000. His brother, Rabbi Yosef Savitsky of Yeshivat Torah Vodaath, concurred and had nothing further to add (conversation, January 2001).
- 56 Similarly, in a booklet prepared in 1951 for the OU and the Rabbinical Council of America (RCA) by Rabbi Irwin Gordon and Victor Geller, swordfish, apparently on Rabbi Tendler’s instructions, is listed as non-kosher.

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Isser Yehudah Unterman (1886-1976),<sup>57</sup> then Chief Rabbi of Tel Aviv-Jaffa, and later Chief Rabbi of the State of Israel, permitted the swordfish to a questioner<sup>58</sup> (1 *Marcheshvan* 5722/ 11 October 1961), Rabbi Tendler reiterated his position prohibiting swordfish in a letter to Rabbi Unterman. Thus began the great and very public swordfish debate, which took place in the responsa of the *posekim* and the pages of halakhic journals (*Sinai*, *ha-Ma'or*, *ha-Pardes* to name a few) in Israel and the United States for most of the 1960s.

Despite the fact that Rabbi Tendler's letter was not published, based on Rabbi Unterman's original arguments, his response to Rabbi Tendler in *Shevet mi-Yehudah* (9 Adar 2, 5722/ 15 March 1962), and an article that Rabbi Tendler later published in *ha-Pardes*, it is fairly clear what Rabbi Tendler's arguments were.<sup>59</sup> In his original responsum, Rabbi Unterman based his lenient position on three points: 1) The

- 57 Rabbi Unterman was Chief Rabbi of Tel Aviv-Jaffa from 1946-64, at which time he became Ashkenazic Chief Rabbi of Israel. See *Encyclopaedia Judaica* 15:1688-89. Rabbi Unterman's letters can be found in *Shevet mi-Yehudah: Shu"t from Rabbi Isser Yehudah Unterman* (Ariel, 5753), *YD*, 5, 118-19.
- 58 The existence of the question indicates that uncertainty had arisen in someone's mind. Rabbi Unterman's work, *Shevet mi-Yehudah*, does not include the original question or the name of the questioner, so no further information about the source of this doubt is available. The seeds of doubt may have been planted by the OU lists authored by Rabbi Tendler that had appeared a decade earlier. A further indication that the previously widespread, permissive attitude was being challenged is that, in 1959, Seymour Siegel observed that: "According to a ruling of the [Conservative] Rabbinical Assembly of America's Committee on Law and Standards, sturgeon and swordfish are kosher" (S.H. Dresner, "The Jewish Dietary Laws: Their Meaning for Our Time"; Seymour Siegel, "A Guide to Observance" (New York: The Burning Bush Press, 1959), pp. 55-56. It thus seems that already pre-1959 the kashrut of the swordfish was being challenged, such that the Rabbinical Assembly of America's Committee on Law and Standards felt a need to address the issue.
- 59 Rabbi Unterman's response as well as a second letter by Rabbi Tendler can be found in *ha-Pardes*, 40:4 (*Tevet* 5726[1966]): 16-18. Interestingly, Rabbi Tendler mentioned in passing in this letter that he thinks that the scaleless leather carp is prohibited. This complicated question, which I hope to address at a later date, was more recently addressed by Rabbi Abraham Steinberg (reported in *The Baltimore Jewish Times*, 24 Nov. 2000), who ruled the fish to be kosher. See also Rabbi Yigal Mamlie in *Or Torah* (Yeshivat Kise' RaChamim: Bnei Brak, 5750), Siman 77: 389-91, who addresses the issue. See also Rabbi Amram Edr'ai, *ha-Kashrut ke-hilkhatah*, Vol. 1 (1997), 48:10 (and the sources in his note 8), where he prohibits both eating the leather carp and carrying out such genetic work. See also the article on canned tuna by Rabbi Yehudah David Bleich in *Or ha-Mizrach* (*Tevet* 5749): 130-50 where, on pp. 134-35, he argues based on a position of the Chatam Sofer that a fish's kashrut is species-dependent, not dependent on the individual fish. Thus, if an individual skipjack tuna without scales were to be found it would be kosher. I presume he would treat carp similarly.

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*Knesset haGedolah* and all those who cite him and rely upon him; 2) The identification of the swordfish in the *Talmudic Encyclopedia's* article on fish,<sup>60</sup> and 3) The *Encyclopedia Britannica*, which asserts that the swordfish belongs to the mackerel family, a known kosher family.<sup>61</sup> Rabbi Unterman later added a fourth point arguing that just as birds are presumed kosher based on a tradition passed down through the generations by God-fearing Jews, so too should fish be.<sup>62</sup>

- 60 The *Talmudic Encyclopedia* seems to be an early source that equivocates. Volume 7, published in 1956, contains an article about fish (pp. 201-26) by Professor Yehudah Feliks. Between pp. 209-10 are four pages containing sixteen fish pictures. Captioning all but three there is, along with other details about the fish, an unequivocal statement about its kashrut status. Next to number twelve, the swordfish, there is no definitive kashrut statement, only descriptive details. In addition, the note hesitatingly equates swordfish with *akhsafti'as*. In the text (p. 211) of the article *akhsafti'as* (and *k'safti'as*) are described as talmudic (*Tosefta* Chullin 3.27 [Zuckermandel]; Chullin 66b; Avodah Zara 39a) examples of kosher fish that lose their scales on being landed. Others (e.g. Jastrow p. 65; Steinsaltz edition of *Avodah Zara*) more definitely identify it as the swordfish (*Xiphias*). Fifteen years later, Feliks was seemingly even more doubtful when he wrote in the *Encyclopaedia Judaica* (6:38): "... such as the *akhsafti'as* which is presumably the swordfish (*Xiphias*). This identification however, is not absolutely certain and thus the permissibility of the swordfish is doubtful." Based on the *Talmudic Encyclopedia's* identification in the text, Rabbi Unterman claimed that the *Encyclopedia* permitted swordfish. Rabbi Tendler (*Jewish Observer* (April 1968, page 14) notes that the *Talmudic Encyclopedia* "does not list the swordfish as kosher" and claims that it is therefore prohibiting it, since clearly, he claims, the fish discussed in the text is not the swordfish. In a personal conversation with Prof. Feliks (26 Nov. 2000) he explained to me that Rabbi Shlomo Yosef Zevin, the editor of the *Talmudic Encyclopaedia*, had strongly requested that he refrain from any form of *pesak*. That is why the entry appears ambiguous. This does not explain his hesitation in the *Encyclopaedia Judaica*. However, he emphatically stated several times during our conversation that, primarily based on the identification from the *Tosefta*, he personally absolutely believes the swordfish to be kosher. This identification is supported by Pliny's statement in his *Historia Naturalis* that the swordfish was called *Xiphias* in Greek and *Gladius* in Latin.
- 61 This is perplexing, because swordfish (*Xiphiidae*) and other billfish such as sailfish and marlins (*Istiophoridae*) are usually classified in the suborder *Scombroidei* but are not part of the family *Scombridae* (mackerels, bonitos, and tuna). The *Encyclopedia Britannica* (14th edition [1929-73] 1972, 21:552, s.v. Swordfish) states: "Both the swordfish and marlins are thought to be related to the mackerel, which they resemble in the beautifully streamlined body." Quite a noncommittal and unscientific statement! In the updated version (15th edition [1974-] 1992, 11[Micropaedia]: 452, s.v. Swordfish) this almost silly line is absent, but it is now noted that the swordfish is scaleless, without even mentioning that the juvenile has scales, a fact accepted by all opinions. So much for trying to acquire sufficient scientific information on which to decide Halakhah from an encyclopedia!
- 62 This questionable assertion is discussed in the text above, where it is pointed out that there is no concept of a *mesorah* for fish. This heated swordfish argument seems to have produced flawed arguments by all parties.

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In refuting Rabbi Unterman's arguments, Rabbi Tendler set up the basic rubrics for the debate. Firstly, he explored the question of whether the *Knesset haGedolah's* ruling is at all relevant to what is today known as a swordfish, and, secondly, this notwithstanding, he asked whether the swordfish has kosher scales. Turning to the first issue, Rabbi Tendler claimed that the fish permitted by the *Knesset haGedolah* was not the swordfish, but the sailfish. According to Rabbi Tendler, the sailfish was permitted by the above-cited rabbis<sup>63</sup> despite its lack of scales in the juvenile, because it grows them as adults.<sup>64</sup> Regarding the second issue, Rabbi Tendler argued that he had examined swordfish under a microscope and found no scales. Thus, the swordfish was non-kosher on both counts: it was not the *Knesset haGedolah's* fish and it did not have scales.

In response, Rabbi Unterman correctly retorted that Rabbi Tendler seems to not have examined with sufficient care the *Knesset haGedolah* and those who cite him. The permissive ruling of the *Knesset haGedolah* related to a fish that loses its scales in the water, not one that grows scales as an adult. In addition, Rabbi Unterman states that of course Rabbi Tendler had found no scales, the *Knesset haGedolah* himself states that they are left behind in the water.<sup>65</sup> Furthermore, argued Rabbi Unterman, the *Knesset haGedolah* referred to the consumption of the fish under discussion as a widespread custom. It is far more likely that the *Knesset haGedolah* was referring to the swordfish, which is found in abundance in the fish markets, rather than the sailfish, which rarely is. This statement is as true today as when Rabbi Unterman wrote it more than forty years ago. Thus, according to Rabbi Unterman, the *Knesset haGedolah* was speaking about swordfish and swordfish have kosher scales.

63 It should be noted that in its 2000 list of fish, the OU includes the sailfish, marlin, and spearfish amongst the non-kosher fish. Rabbi Levinger in his book (p. 127) describes them as possessing easily removable scales throughout their life, and thus presumably rules that they are kosher. (In a talk on 13 May 2003 he explicitly stated this, although he notes in his book that Atz thinks they are scaleless). Di Segni ("Guida alle regole alimentari ebraiche" [Roma, 1996], p. 47) lists *Tetrapterus albidus* (marlin) as non-kosher. Recently, the OU has reversed its position and now lists the blue marlin as kosher (See *OU Daf HaKashrus*, April 2004: <http://www.kashrut.com/articles/fishfaq/#sdfootnote19stm>). The quoted responsum was written to Rabbi Avraham David Moskowitz of Jerusalem.

64 This is factually incorrect – both juvenile and adult sailfish have scales, albeit possibly not kosher ones.

65 In *ha-Pardes*, 40:4 (5726/1966): 16, 18, Rabbi Tendler defends himself by clarifying that he was not looking for scales, which all agree must be visible to the naked eye, but for the points of attachment for those scales – which supposedly fell off when the fish was removed from the water. Lack of such marks even after microscopic investigation, he argues, belies the claim that there ever were scales.

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Hot on the heels of this exchange, the Israeli Ministry of Religion set out to examine the swordfish question as one of several controversial kashrut issues discussed in an article “Kashrut be-medinah le-halakhah u-le-ma‘aseh.”<sup>66</sup> The article first notes that there is a debate on the subject.<sup>67</sup> It then summarizes Rabbi Unterman’s arguments in two paragraphs, and states that: “from the above it is clarified that this fish [the swordfish] should be permitted.” It then cites “A great scientist, one of the great ichthyologists [sic!], Rabbi Moshe Tendler.” Based on Rabbi Tendler’s assertion that there are two types of “swordfish,” the kosher sailfish (sic! see note 63) and the non-kosher swordfish, and that the *Knesset haGedolah* was talking about the sailfish. The article concludes that: “the matter requires further clarification and it is prudent to refrain from eating this fish that is brought to Israel in recognizable quantities.”<sup>68</sup>

Contemporaneously, Rabbi Eliezer Waldenberg (hereafter, the *Tzitz Eliezer*, *Tzitz Eliezer* 9:40)<sup>69</sup> also prohibited swordfish. He argued that the *Knesset*

66 Rabbi Katriel Fishel (K.P.) Tchorch, *Sinai*, 52:4-5 (*Tishrei-Adar* 5723[1963]): 204-11.

67 The entire, brief, discussion about swordfish is on page 209.

68 It is unclear what this is referring to. It appears that Israeli fishermen catch essentially no swordfish. According to the FAO (Food and Agriculture Organization) of the UN, the total international swordfish catch in 1996 was approximately 80,000 metric tons, of which over 7,000 tons were caught in the Mediterranean. Turkey caught 320 tons, and the two top catchers were Italy and Greece, which caught 3,200 and 1,200 tons, respectively. Israel is not listed at all. According to the NMF (National Marine Fisheries) of the NOAA (National Oceanic and Atmospheric Administration) in Tech Memo NMFS-F/SPO-24 (published 1997), Israel caught no swordfish in 1992, although somehow the EU reported importing 2 tons of frozen swordfish from Israel in 1992. In addition, the NMF states that there is no indication that swordfish are plentiful in Israeli waters. According to Oren Sonin of the Israeli Fisheries Bureau, neither Israeli nor other fishermen, have ever, nor are they now, swordfishing off the Israeli coast. A first (failed) attempt was made in the early 1990s, and there has more recently been another attempt made. Nor is Israel now, nor did they ever, import swordfish. Details of all this can be found in articles that appeared in the Israeli fish journal *Dayag u-midga be-Yisrael* in 1986, 1991, 1992, and 1993, entitled “Attempts at Swordfishing off the Israeli Coast” (Heb.), and one from 1995 explaining that swordfishing off the Israeli coast has the potential for profitability. The lead author of all the articles was S. Pisanty, except in 1993 when Sonin was first author. In addition, the Israel Fisheries Bureau issues an annual report and the November 2000 report includes no mention of swordfish. In the summers of 2003-05 a Japanese longline boat fishing for tuna did land several swordfish. Even were one to assume that FAO and NOAA reporting is inaccurate, especially for low-quantity, high-value species, this statement about the recognizable quantities still appears strange, because it is impossible to conceive of any way for there to be “recognizable quantities.”

69 Based on the similarity in argumentation, it appears that both the Israeli Ministry of Religion’s prohibition, spelled out in *Sinai*, 52:4-5 and discussed above, and Rabbi



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*haGedolah* could not have been referring to the swordfish for three reasons: 1) The *Knesset haGedolah* wrote about a small fish; swordfish can grow to gigantic proportions – sometimes weighing over five hundred kilograms and having a length of two hundred and fifty centimeters; 2) The *Knesset haGedolah* wrote about an experiment in which a black cloth was put in the net and thereby trapped some of the scales. This could not happen with swordfish, which everyone agrees lack scales as adults; and 3) The *Knesset haGedolah* reported marks on the fish's skin where the scales had fallen off, an unlikely possibility regarding swordfish.

*Tzitz Eliezer* reports that some (clearly referring to Rabbi Unterman) want to permit swordfish because they are in the Marlin “family,” a family that also contains kosher species. He dismisses this as spurious because we cannot permit a species simply because scientists have placed it in some general category that also includes kosher fish.

*Tzitz Eliezer* suggests that the *Knesset haGedolah* was referring to the sailfish, a species that he claims is kosher, has a sword, large scales its whole life, and many scales that fall off when the fish is caught. He notes that the scientific community is still unsure about the swordfish's scales. He is quite correct about this last point. The swordfish undergoes such a complex metamorphosis from larva to adult, looks so different at the various stages (see Figure 2<sup>70</sup>), and has such a wide geographic distribution that there was historically some confusion in the scientific community as to its name, identity, and life cycle.

As the debate continued, the issue moved to the pages of *ha-Ma'or*. At the end of 1962 (14:2 [128][1962]: 24-25), the editor of *ha-Ma'or*, Rabbi Meir Amsel, responded to a query by “proving” that swordfish is not kosher and adding a new (erroneous) argument – that all predatory fish are non-kosher. In a follow up (*ha-Ma'or* 14:3 [129] [January 1963]: 24) he reported that many rabbis had pointed out to him the permissive statement of the *Knesset haGedolah* and all those who followed in his footsteps. Rabbi Amsel responded that the *Knesset haGedolah*'s position is irrelevant because there is no custom regarding the consumption of swordfish. The fish referred to by the *Knesset haGedolah* was a small fish that lived off the coast of Italy and cast off its scales on being landed. The swordfish is a huge fish that lacks scales. In support, he cites his friend, Rabbi Stefanski, the

Waldenberg's responsum relied heavily on Rabbi Tendler's research, discussed next, as the basis for their information.

70 These diagrams are from B.J. Palko, G.L. Beardsley, and W.J. Richards, “Synopsis of the Biology of the Sword-fish, *Xiphias gladius* Linnaeus,” *U.S. Department of Commerce, NOAA Tech. Rep. NMFS Circ. 441* (FAO Fisheries Synopsis No. 127) (1981), p. 8.

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fish expert and author of a pamphlet *Dagim Tehorim*,<sup>71</sup> who reports that he investigated the matter on land and sea, and the fish is unquestionably non-kosher.

Four issues later (*ha-Ma'or*, 14:7 [133], [May 1963]: 16), Rabbi Simcha Bunim David Sofer of Jerusalem contributed to the debate. He cited the *Talmudic Encyclopedia's* identification of a kosher talmudic fish with the swordfish,<sup>72</sup> and he discredited Rabbi Amsel's suggestion that predatory fish are non-kosher. Nonetheless, he concluded by explaining that, regarding fish (as was noted above), tradition is not binding and the fish referred to today as a swordfish neither has scales that match the description of the *Knesset haGedolah* nor has kosher scales, and therefore it is not kosher.

In a postscript, the editor, Rabbi M. Amsel, agrees that he erred regarding predatory fish but then reiterates his three basic points: 1) The fish of the *Knesset haGedolah* was not a swordfish; 2) The *Talmudic Encyclopedia* erred (in classifying the swordfish as a kosher fish); and 3) The swordfish is unquestionably non-kosher. All halakhic debate notwithstanding, it seems that swordfish from Florida were still being sold with some sort of rabbinic sanction because, in a follow-up issue (*ha-Ma'or* 14:9 [135], [August 1963]), Rabbi Samuel Tuvia Stern, of Miami, reports in a letter to Rabbi Amsel that he had never been asked about the status of the swordfish and could not imagine who was certifying it. However, joining the permissive camp for a moment, he does mention that local scientists informed him that the swordfish does have very small scales. He further observes that there are similar types of fish, the marlin and the sailfish, which have long, deep scales, and he will have to clarify the status of all three.<sup>73</sup> In 1967, Rabbi Amsel (*ha-Ma'or* 19 [166]: 18-19) responds to Rabbi Shmuel Machlis, who is concerned that, due to the Vatican's permitting meat on Friday, fishermen are trying to convince Jews that swordfish is kosher. Rabbi Amsel reiterates that swordfish are absolutely not kosher, what some Israeli "dreamers" wrote in *ha-Pardes* permitting them is simply null and void, and the *Knesset haGedolah* was referring to some other species. In this article his reasoning to prohibit closely paralleled Rabbi Tandler's.

As the saga continued, the debate spread to the pages of *ha-Pardes*. In the second installment of a multipart series on the kashrut of fish, Rabbi Shimon Efrati, head of the National Kashrut Division of the Israeli Chief Rabbinate, discusses

71 Unfortunately, I have been unable to locate a copy of this pamphlet.

72 See discussion above in note 60.

73 I was unable to find his follow-up, and in a telephone conversation in July 2000 he had no recollection of the topic.

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(*ha-Pardes* 40:3, Siman 20 [Kislev 5726/ Dec. 1965]: 10-13) the swordfish/sailfish question. He asserts that we know of three types of fish that leave their scales in the water, the third in his list being the swordfish, which the *Knesset haGedolah* permits. He then notes that the fish expert, the ichthyologist (sic!), Rabbi Moshe Tendler, has opined that the fish of the *Knesset haGedolah* was the sailfish, not the swordfish. In the footsteps of Rabbi Unterman, he rejects this assertion. Finally, he turns to Professor Heinz Steinitz of the Hebrew University Zoology Department for confirmation of the scientific facts. Based on his personal analysis and Prof. Steinitz's response, Rabbi Efrati writes that there is no reason to prohibit the swordfish, a fish that many people still eat.

In the following issue of *ha-Pardes* (40:4) Rabbi Moshe David Tendler responded (Siman 29; pp. 16-19). He claimed that there is a debate amongst the experts whether swordfish even have scales, with those who claim they do asserting that they lose them as they mature. He also notes a major flaw in Rabbi Efrati's reasoning. Rabbi Efrati had declared that Professor Steinitz's description of the swordfish as losing its scales as it matures exactly parallels the description of the *Knesset haGedolah*'s fish. Rabbi Tendler very correctly notes that this is not true – the *Knesset haGedolah* wrote about a fish that had scales as an adult but shed them on being landed, not a fish that lost its scales as it matured.

Finally, Rabbi Tendler concludes the first part of his article (p. 16) by observing that the permissive ruling is based on the scientific claim that the swordfish has scales as a juvenile, a claim for which he says we have no tradition and for which there is no evidence. When faced with a doubt regarding a biblical prohibition we rule stringently, and thus Rabbi Tendler felt that he had no choice but to forbid the swordfish. Placing all his cards on the table, Rabbi Tendler then provides Rabbi Unterman's second letter, written to him on 9 *Adar* II 5722, a response that he wrote to Rabbi Unterman, and a letter in English that he wrote to Rabbi Tchorch, director of the Kashrut Division of the Chief Rabbinate at the behest of ha-Rav ha-Gaon Moshe Feinstein (his father-in-law) on 21 *Adar* I 5722 (1962). In the letter, he explains clearly why he thinks the swordfish cannot be classified as kosher.

Notwithstanding Rabbi Tendler's lengthy writings, Rabbi Efrati, defender of the tradition, did not let the issue lie. In a later installment of his fish series (*ha-Pardes* 40:7, Siman 55, p. 15), he again discussed the swordfish and repeated his belief that it was kosher. He asserted that the primary reason for permitting it is the testimony of the *Knesset haGedolah*, which no one (until now) had impeached.

In the following issue of *ha-Pardes* (40:8 [May 1966]: 24,33) a new issue was raised by Rabbi L. Krasner of Liverpool, England. He concluded, based on the

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*Shulhan Gavohah* and the *Node be-Yehudah*, that a fish that supposedly loses its scales on being landed is kosher only if one of two conditions is met: there are clear marks indicating where the scales had been seated or they are observed falling out. In the swordfish, he asserts, neither of these conditions is met. The noted ichthyologist [sic!] Rabbi M.D. Sendler [sic!] examined the skin with a microscope and found no indication where the scales had been, and they were not observed to fall out. Ergo, the fish of the *Knesset haGedolah* is the sailfish, which does have marks from where scales fell out [sic!], and the swordfish is not kosher.

Rabbi Krasner's arguments are not convincing. The Talmud does not mention these requirements but rather lists fish names, presumably because visual evidence is unnecessary. The tradition that a fish loses its scales is therefore sufficient. In other words, if the *Knesset haGedolah*'s grandfather did the experiment and saw the scales fall out, that is sufficient for future generations. Not to mention the fact that, on observation, it can be shown that the sailfish also possesses no such marks.

As the 1960s progressed, the debate became ever more heated. In the United States there appeared a sharply-worded article<sup>74</sup> in Hebrew, entitled "Clarification that the Permissive Ruling in *ha-Pardes* about All Manner of Fish from the Vaad ha-Kashrut of the Chief Rabbinate is a Permissive Ruling that Includes All Manner of Vermin [Heb. *sheratzim*]" (*ha-Ma'or*, 17:2<sup>75</sup>[158] [*Cheshvan-Kislev* 5726/Nov.-Dec. 1965]:15-18). Among other fish decisions, this article forcefully attacks the ruling regarding the swordfish. It begins by demonstrating that the *Knesset haGedolah* cannot be relied upon to permit swordfish because, for example, he had described a small fish capable of being wrapped in a black cloth, something clearly impossible with a large swordfish.<sup>76</sup> This anonymous article also raises the issue that the Talmud only explicitly discussed fish that lose their scales on leaving

74 This article was published anonymously. It contains many of Rabbi Tendler's thoughts, but that is no proof that he wrote it because anyone writing on the subject at this time would have based their arguments on his work. Based on earlier articles in *ha-Ma'or*, it seems likely that Rabbi Amsel wrote this piece.

75 In the English it is referred to as 15:10 (158).

76 This, if true, would also put into question Rabbi Tendler's claim that the *Knesset haGedolah* was talking about the sailfish, another large fish. However, this argument can be refuted. Perhaps the *Knesset haGedolah* was referring to a large fish that was placed upon – not wrapped in – a black cloth. Alternatively, perhaps the swordfish caught were young (see text below after note 100). Indeed, swordfish can grow large; the current world record of a *Xiphias* caught by rod and reel is a 536 kg., nearly 4.6 m. behemoth caught off Iquique, Chile in 1953 (Gordon, *World Record Game Fishes* [International Game and Fish Association], 21 and 2005). The average is more in the 45-135 kg. range. But many, particularly those caught four hundred years ago, might have been much smaller.

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the water, not fish – perhaps, like the swordfish – that lose their scales as they mature and then continue to live in the water without them.

This anonymous letter, as its title foreshadows, gets nasty in its tone. In one of the *ha-Pardes* articles, it had been suggested that the word *dayage* (fishermen) be substituted for *dayane* (judges),<sup>77</sup> a slight graphical change. To this, the anonymous author in *ha-Ma'or* responds (p. 17): “If in the eyes of this author, judges and fisherman are one and the same, it is no surprise that everything is permissible.” The article then concludes (p. 18) with the caustic comment (my translation):

How astounding it is that some rabbi from the “Chief Rabbinate” invents amazing permissive rulings like this in the Holy Land for the reason that he wants to assist the nation’s fishermen who increasingly catch all manner of fish<sup>78</sup> ... or because he is under pressure from the secular government to permit the forbidden, but why should the journal *ha-Pardes* introduce this straw into the United States to lead astray innocent people with vermin and other forbidden matter. We have enough burdens and suffering from our own permissive rabbis, what need is there to introduce all manner of useless things, and large obstacles from the international permitters, the bureaucrats of the State of Israel.

Up until this point, only the Orthodox rabbinate has been discussed. Quite significantly, as I will argue, the Conservative movement in the United States entered the fray as well. The swordfish issue became a point of contention between Orthodox and Conservative Jewry, and a personal point of tension between Rabbi Tendler and Rabbi Klein<sup>79</sup> of the Conservative movement. In reaction to Rabbi Tendler’s

77 This suggestion was originally made by Rabbi Barukh ha-Levi Epstein, author of the *Torah Temimah*, in his *Tosefet Berakhah* commentary on the Pentateuch. Therein, on Leviticus 11:9, he posits that this scribal error crept into the ‘*Arukh* in the section on *akumas*, and he presents a detailed argument in support of this correction.

78 See statistics on the lack of a substantial Israeli swordfish catch in note 68, which makes this statement simply part of a bitter attempt to malign the Israeli rabbinate.

79 Rabbi Isaac Klein was born in the Carpathian Mountain area that is now part of Russia but that, at the time of his birth in 1905, was part of Hungary. Rabbi Klein’s early education took place in the *cheders* of his native land, and he continued his studies in Munkatch. He emigrated with his family to the United States in 1921. After earning a B.A. from City College in New York in 1931, he was ordained at the Jewish Theological Seminary in 1934 and later earned a Ph.D. from Harvard. During World War II, Rabbi Klein volunteered as an army chaplain, and subsequently wrote a book about his experiences. He then served as rabbi at Kadimah Congregation, Springfield, Massachusetts, 1934-53; Temple Emanu-El, Buffalo, New York, 1953-68; and Temple Shaarey Zedek, Buffalo (which was created through the merger of Temple Emanu-El with Temple Beth David in 1968), 1968-72. Rabbi

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declaration that swordfish is non-kosher, in 1966 the Conservative movement issued a sharply-worded responsum<sup>80</sup> in which it reiterated its position that swordfish is indeed kosher.<sup>81</sup> The responsum systematically reviewed the relevant halakhic material, even noting the peelability requirement. It finally based its permissive conclusion on a letter to Rabbi Isaac Klein from a noted ichthyologist at the Smithsonian Institute, Dr. Bruce B. Collette, who stated unequivocally that swordfish have scales as juveniles and retain them until they are approximately four feet long.<sup>82</sup>

Klein was a leader of the right wing of the Conservative movement, and was a member of its Committee on Jewish Law and Standards from 1948-79. He was also the author of several books, including *A Commentary on "The Code of Maimonides, Book Twelve: Book of Acquisition"* (1951). Perhaps his most notable book, *A Guide to Jewish Religious Practice*, was published shortly after his death in 1979.

- 80 It can be found in *Proceedings of the Rabbinical Assembly*, 1966, pp. 111-15, and in Isaac Klein, *Responsa and Halakhic Studies* (Ktav Publishing House, Inc., 1975), pp. 75-78. According to Rabbi Tendler (*ha-Pardes* 40:4 [5726/1966]: 18), the Conservative movement first examined the issue and permitted swordfish in early 1962. This seems to be in error based on the quote from Siegel in note 58.
- 81 There appears to be a *ma'aseh rav* on which the Conservative movement also relies. The *New York Times* (5 May 1975, pp. 33, 61) quoted Rabbi Arthur A. Chiel of Woodridge, Conn., as asking "How does Conservative Judaism feel about swordfish? My ladies clamor to know." In response, Rabbi Jules Harlow, secretary of the Law Committee when this question was posed, "replied that the Law Committee had long maintained that swordfish was kosher, based on the tale that the unfortunate fish was consumed at the table of Prof. Louis Ginzberg" ([1873-1953]; See *Encyclopaedia Judaica* 7:584-85 for a biography of this student of Kovno and Telz, great-grandnephew of the Gaon me-Vilna, and talmudic scholar). Prof. Ginzberg's wife is then quoted as saying that "He ate it many times – it's the best fish there is." (I thank Avi West for directing me to this interesting *New York Times* article.) Always wary of media reports, I spoke to Rabbi Jules Harlow (25 July 2000). He emphasized that the basis of the responsum was the material presented by Rabbi Klein, but that the *ma'aseh rav* was also important. He added that although he personally never ate swordfish at the home of the Ginzbergs, he knows many people who did. This debate between the Conservative and Orthodox appeared in the *New York Times* again on 21 March 1979.
- 82 As a side point, the Conservative responsum notes that the United States Department of Interior published a pamphlet entitled "Food Fishes with Fins and Scales," which includes swordfish. Isaac Ginsburg, "Food Fishes with Fins and Scales," U.S. Department of Interior, Fish and Wildlife Service, Bureau of Commercial Fisheries, Fishery Leaflet 531 (published 1961 as a revision of leaflet 8 [April 1946] and leaflet 418 [August 1954]). Rabbi Tendler (*Jewish Observer*, April 1968) claims that this list includes not only swordfish but also the patently non-kosher catfish and shark. It would be shocking that Rabbi Klein should have been so careless as to mention this obviously irrelevant list that would then be used to discredit him. However, contra Rabbi Tendler's assertion, the copy of the list that I have (the 1961 version) does not list either of those obviously non-kosher fish. The earlier versions

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Rabbi Tendler immediately responded to the Conservative responsum with a widely-distributed “fact sheet” in 1966, and later with a very forceful and convincing article.<sup>83</sup> This article by Rabbi Tendler went on to become the standard reference for anyone in the Orthodox world discussing the kashrut of swordfish, and can be found cited in innumerable books, articles, and websites. In it, Rabbi Tendler systematically presented the relevant halakhic sources and the scientific facts as then known, and then refuted many of the arguments used in the Conservative responsum. Then, in addressing the main point, he too wrote a letter to Dr. Collette. Rabbi Tendler, conceding that the juvenile swordfish has scales, wanted to know “Does the scale of the juvenile swordfish resemble the scale of the whitefish or carp [both kosher fish] with respect to its relatively loose attachment to the underlying integument?” Dr. Collette responded to the question as asked, and answered in the negative, prompting Rabbi Tendler to prohibit swordfish. Rabbi Tendler further noted that there is no reference in the Talmud to a fish that has scales as a juvenile and not as an adult, and such a fish, he declared, would not be considered kosher.

It is quite perplexing, even troubling, that the Conservative responsum cited the Rama’s requirement of peelability, and then totally neglected to address this issue in the discussion of the swordfish.<sup>84</sup> However, Rabbi Tendler also seems to

may have, but Rabbi Klein may have used the revised version. Rabbi Tendler further chided (*ha-Pardes*, 40:4 [5726/1966]: 18) that “Since the author [Ginsburg] was an egotistical ‘am ho’oretz’ of ‘liberal’ Judaism he did not consult any halachic authority” while compiling his list. I don’t know if Rabbi Tendler knew Ginsburg, but those to whom I spoke who knew him strongly deny that assertion – they describe him as a *mensch*, who did in fact consult with relevant authorities.

- 83 Rabbi Moshe D. Tendler, “The Halachic Status of the Swordfish: To Remove a Stumbling Block – a Teshuva with an Epilogue,” *Jewish Observer* (April 1968): 13-17. It was reprinted, in *Gesher*, 4:1 (1969): 85-90, and again in *Pardes Rimonim: A Manual for the Jewish Family* (NY/Hoboken: Ktav, 1988), pp. 106-16. A brief summary can be found in *A Guide To Kashrut*, published by the Student Organization of Yeshiva University (5th edition, 1981).
- 84 In Rabbi Klein’s personal notes, written early in his investigation, he reports that he met with Dr. Carl Ganz (a biologist who was a member of his congregation from 1962-69) on 13 October 1964. At this preliminary meeting Dr. Ganz thought that a case for the kashrut of the swordfish could be made, but not for the sturgeon. At that time Rabbi Klein surprisingly wrote in his personal notes that: “The distinction that in one case they [the scales] come off easily and in the other case they do not is not a valid one. The real distinction is that in the case of one the scales are of bone. In the case of the other the bone is covered with enamel. Scientifically these denote separate species and different grades in the ladder of evolution.” He summed up the meeting with Dr. Ganz by noting: “I had an education in the study of fish. The subject is becoming interesting.” His personal notes cited here and below were

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have been sloppy. He got much closer to asking the crucial question, but stopped short. He asked Dr. Collette if the scales of the juvenile swordfish are as loosely attached as those of the whitefish or carp. Yet, in order to be acceptable, the scales do not necessarily have to resemble those of the whitefish or carp. There are certainly fish with acceptable, peelable scales that are not as loosely attached as the scales of those two species. Examples might include perch, bass, and grouper. Rabbi Tendler could just as easily, and equally erroneously, have asked: “Does the scale of the juvenile swordfish resemble the scale of the shark with respect to its relatively tight attachment to the underlying integument?” and, in receiving the response in the negative, concluded that it must therefore be kosher.

Thus, Rabbi Tendler and Rabbi Klein were in full agreement on the utility of science in establishing swordfish kashrut. By the end of the 1960s, the key issues separating the Orthodox and Conservative positions had finally crystallized and coalesced to two major points: 1) The swordfish’s juvenile scales, according to Rabbi Tendler, are not of the kosher variety because they are not peelable like those of the whitefish or the carp; and 2) While agreeing that swordfish have scales as juveniles and not as adults, they differed as to the permissibility of a fish that loses its scales as it matures.

#### THE FISH OF THE *KNESSET HAGEDOLAH*

Throughout the previous section, it was seen that one question that was consistently addressed by all of the rabbinic decisors was: Can the “fish with a sword” of the *Knesset haGedolah* be identified and used as a precedent? Even though the kashrut of swordfish and the identity of the *Knesset haGedolah*’s fish are not necessarily interdependent,<sup>85</sup> it may be of more than passing interest to know what a widely-cited giant of Jewish law was actually referring to. Indeed, four swordfish kashrut possibilities arise from the *Knesset haGedolah*’s words: (1&2) The *Knesset haGedolah* may have been discussing another species and the swordfish, unrelatedly, may or may not be kosher; (3) The *Knesset haGedolah* may have been discussing

searched for and generously provided to this author by his daughters, Dr. Miriam Klein Shapiro and Rivke Berkowitz. In his notes he can be excused for apparently forgetting the halakhic requirement of peelability. But having cited the requirement at the beginning of his responsum, it is difficult to explain how or why he then chose to ignore it. Another example of Rabbi Klein’s sloppiness was his quoting (p.113) from the *Darke Teshuvah* without commenting that he in turn had been quoting the *Knesset haGedolah*.

85 This is clearly seen by the fact that the OU and most other compilers of lists of kosher fish have accepted Rabbi Tendler’s position that the swordfish is not kosher, yet have rejected his identification of the sailfish with the *Knesset haGedolah*’s fish, ruling that sailfish is also not kosher.



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the swordfish and it is indeed kosher; (4) The *Kneset haGedolah* may actually have been describing the swordfish and yet erred regarding its scales falling off, and the swordfish may actually be non-kosher. Several possible identities of the *Kneset haGedolah*'s "fish with a sword" will be addressed.

Given that the *Kneset haGedolah*'s fish looked like a swordfish, before beginning our investigation, it is worth noting what fish look similar to the swordfish, grow to the same size as the *Kneset haGedolah*'s fish and are commonly caught in the *Kneset haGedolah*'s region

Swordfish (*Xiphias gladius*) are the most widely distributed of what used to be known as billfish (Figure 3C).<sup>86</sup> Swordfish occur naturally worldwide<sup>87</sup> from

86 In common usage the marlin (*Makaira indica*) may erroneously be referred to by some as a swordfish, and the Chinese paddlefish (*Polyodon gladius* or *Psephurus gladius*) is also occasionally called the Chinese swordfish instead of the Chinese paddlefish. In present day usage, only marlins, sailfish, and spearfish are technically classified as billfish.

87 In recent years, there has been an attempt to curtail swordfish fishing and encourage restaurants to boycott swordfish due to the declining North Atlantic swordfish population. The *New York Times* (14 November 1999, p. 14) ran an editorial that called for "Giving Swordfish a Breather" and reported that the average size swordfish brought to market has dropped from 114 kg. in 1960 to 41 kg. today. Others, including the California Seafood Council, present strong evidence against the "Give Swordfish a Break" campaign.

Another concern regarding swordfish consumption has recently made news. While a study published in the *Journal of the American Medical Association* (JAMA) in January 2001 strongly recommended eating at least two servings of fish a week, a report released the week before by the US FDA warned pregnant women, women of childbearing age who may become pregnant, nursing mothers, and young children to curtail their consumption of swordfish, king mackerel, tilefish, tuna, and shark due to high levels of a form of mercury known as methyl mercury that can damage the developing nervous system. This is not a new issue. In 1971, the US FDA found what were considered unacceptably high levels of mercury in swordfish, confiscated huge quantities and indefinitely banned interstate commerce of swordfish. In response, a study was undertaken to evaluate if this high concentration of mercury was a manmade problem. According to the study (G.E. Miller, P.M. Grant, R. Kishore, F.J. Steinkruger, F.S. Rowland, and V.P. Guinn, "Mercury concentrations in museum specimens of tuna and swordfish," *Science*, 175 (26) [10 March 1972]: 1121-22), the levels of mercury in tuna and swordfish were the same in 1972, 1946, and 1878-1909, indicating it is from naturally-occurring mercury. The *New York Times* (20 February 2001, F2) quotes a recommendation that potentially pregnant women eat no more than one tuna sandwich a week, "but [notes that] the safe limit for other adults is probably much higher." The *New York Times* ran a follow-up article a few months later (Marion Burros, "F.D.A. Cautions against Eating Certain Fish During Pregnancy," *New York Times* [9 May 2001], Living Section) that quoted a report by two environmental groups (not the FDA as the title misleadingly implies), advising pregnant women and those planning to become pregnant to eat no more than one meal a month of canned tuna or several other fish species. Swordfish was not mentioned. And the report of these groups was at odds with

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approximately latitude fifty degrees north to forty-five degrees south in all tropical, subtropical, temperate, and sometimes cold waters of all oceans, including the Mediterranean Sea, the Sea of Marmara, the Black Sea, and the Sea of Azov. Their average size is 68-135 kilograms, but 4.6 meter, 544 kilogram swordfish have been taken on rod and line.

Traditionally, billfish included two closely related families, the Istiophoridae, which includes sailfish, spearfish (one genus, six species), marlins (three genera, eleven species), and the Xiphiidae, which is comprised only of the swordfish. Both families have members whose upper jaw is extremely elongated and narrow.<sup>88</sup> They are fast swimming,<sup>89</sup> aggressive fish in the open ocean. The long bill is thought to be a cutwater that aids in fast swimming, used to decimate schools of fish by thrashing it back and forth horizontally through the water, and used in battles with other fish.

The swordfish can easily be distinguished from the Istiophorids – its bill, or sword, is a broad, flat blade, making up about one-third of the body length. In

those of both the FDA and the National Academy of Sciences. It should also be noted that a recent report (H.H. Harris, I.J. Pickering, and G.N. George, “The Chemical Form of Mercury in Fish,” *Science*, 301[29 Aug. 2003]: 1203) finally identified the particular form of mercury found in fish, and cautiously notes that it may be a less toxic form than other kinds of mercury. There was a recent series of papers (*American Journal of Preventive Medicine* [November 2005]) in which scientists are changing direction and suggesting that the benefit of fish in the diet may outweigh the risk.

88 There are other families of sea creatures with long snouts that are clearly non-kosher. The *Knesset haGedolah* was obviously not referring to the sawfish (family Pristidae – from the ancient Greek word for saw), or claiming that they are kosher. Sawfish have elongated snouts that look like saws. There are seven sawfish species comprised of two genera that have a worldwide distribution in tropical and temperate waters. They are marine creatures, but also inhabit brackish waters and live in freshwater bays, rivers, lakes, and estuaries (river mouths where the saltwater mixes with the fresh), but not in the open seas such as the Mediterranean. They are used in traditional medicine, but not usually as food. Despite their English name, they are not a bony fish, and could never be confused with a kosher species. Like sharks, they have a cartilaginous skeleton; they look and swim like sharks and are closely related to rays. (In Russian, Chinese, and Japanese, their name is something like “saw-ray” and in Indonesian “shark-saw.”) Like other non-kosher species, the sawfish mouth is on the flat underside and the caudal fin (i.e. tail) has a much larger upper half. Sawfish are not related to swordfish or to another long-snouted group, the sawshark (family Pristiophoridae: two genera, five species). And, unlike swordfish, they can be held in captivity and can be seen in aquariums around the world. They are considered sacred to various African and Australian tribes. Most importantly, they do not have kosher scales, although they often do have placoid scales.

89 Sailfish have been clocked at over 110 kilometers per hour for short bursts and probably cruise at 30-50 kilometers per hour.

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addition, it lacks pelvic fins and, in the adult, teeth. The bill of the Istiophorids has a round, rather than a flat, cross section (like a spear rather than a sword), is shorter than the swordfishes', and they have pelvic fins and teeth. Swordfish only have one keel while other billfishes have two keels, one on each side of the caudal peduncle. Because of the difference in cross section of the bill, swordfish are the only ones that have traditionally been called "sword" fish, and it is reasonable to assume as a first guess that such was the intention of the *Knesset haGedolah*.

An example of the confusion that sometimes exists between the types of fish is a 31 July 2000 CNN online report. The headline read: "Fish stabs man." The first paragraph started "A giant swordfish hooked off the Mexican coast...", while the second paragraph stated "... was reeling in the 10-ft marlin ... ." And the third paragraph stated, "The marlin's spear pierced the fisherman's abdomen and came out the other side."

Given the confusion between these relatively similar looking fish, it is important to analyze the *Knesset haGedolah*'s own description of the fish. Firstly, he claims that his fish is commonly consumed, and we know that he lived in Turkey. Secondly, he identifies it as a fish with a sword, known as *fishai ishpada* in the vernacular. Thirdly, he asserts that it is naked when landed because it loses its scales as it comes out of the water. These scales, he contends, can be discerned in a black net placed under the fish when caught.

What are the possibilities? The possibility suggested by Rabbi Tandler is sailfish. Sailfish (Figure 3A) are uncommonly beautiful and adorn many den and living room walls of sports fishermen. One trait of the sailfish that would conform to the *Knesset haGedolah*'s description is that they are spectacular fighters. They are smaller than swordfish, averaging 10-25 kilograms with the record around 70 kilograms (for the Atlantic; Pacific species are about twice that size). However, the two edible species of billfish are marlins<sup>90</sup> and swordfish. Sailfish are not considered particularly good to eat, and it is difficult to say that there was ever a widespread custom to eat them.<sup>91</sup>

90 It is unlikely that the *Knesset haGedolah* was referring to a marlin. Firstly, most are not found in the Mediterranean, although the Atlantic white marlin (*Tetraurus albidus*) can stray there. Secondly, it is unlikely that eating marlin would have become a widespread custom, even though its flesh is considered excellent. And, thirdly, it is pulled from the water with readily evident, pointy scales.

91 Sailfish can certainly be prepared to be tasty, particularly if smoked. However, this is not usually done. Most sports fishermen catch them as trophy fish and have them stuffed and mounted. Commercial fisherman catch them only incidentally and then don't bring them ashore whole.

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Additionally, sailfish have exceptionally strange scales that are long and pointed. According to Nakamura,<sup>92</sup> the “scales vary in shape with growth; in adults they are somewhat sparse, imbedded in the skin, each with a single, rather blunt point or two posterior points.” The scales look more like needles than overlapping armor. When the fish is picked up, a silvery skin rubs off very easily and might contain some of those scales, although in general the scales are not attached particularly loosely.

Furthermore, while the Atlantic sailfish (*Istiophorus platypterus*) has been known to migrate into the Mediterranean (Nakamura, *ibid.*, p. 22), that is certainly not its usual habitat. It would indeed be strange for the *Knesset haGedolah* and the *Me'am lo'ez* to characterize the eating of sailfish as widespread. It would also have been strange for the *Knesset haGedolah* to describe the sailfish by only one unique identifier, its bill, when in fact it has two remarkable traits. If the *Knesset haGedolah* was referring to the sailfish, he most likely would have mentioned the beautiful, unique, enormous purple or cobalt blue dorsal fin, the fish's “sail.”

Finally, sailfish are not naked when taken from the water. Although the scales are sparse, they are present in sufficient number to be readily seen. Yet the main issue being addressed by the *Knesset haGedolah* and all those who quoted him was the kashrut of a naked species. It therefore seems highly unlikely that the *Knesset haGedolah* was discussing sailfish.

Another candidate for the fish of the *Knesset haGedolah* is the needlefish (*Belone belone*).<sup>93</sup> It has a long pointy snout that might be called a “sword.” There is a

92 Izumi Nakamura, *FAO Species Catalogue*, Vol. 5, *Billfishes of the World* (FAO Fisheries Synopsis No. 125, Vol. 5) (Rome, 1985), p. 21.

93 In Europe these are sometimes referred to as garfish. They are quite different from the garfish (*Lepisosteus*) that are found in North America. The American garfish have armor-like bony ganoid scales and are not kosher. There seems to be no question that the needlefish is kosher and indeed the OU list of kosher fish includes “Needlefishes (Family Belonidae).” Quite perplexing is the article by Rabbi Efrati (*ha-Pardes*, 44:9 [June 1970]: 11-12), where he asserts that garfish imported from Portugal that resemble the eel (a decent description of needlefish) have only microscopic scales and are non-kosher. At about the same time (*ha-Pardes* 44:7 [April 1970]: 12-14) Rav Efrati also prohibited scad (*Trachurus trachurus*, also known as “horse mackerel”), claiming that it had non-peelable scales. It is listed as kosher by the OU. Rabbi Levinger (pp. 124-25, note 9; see also Rabbi J. David Bleich, *Contemporary Halachic Problems*, Vol. 1 [NY/Hoboken: Ktav, 1977], pp. 89-90) claims to have examined it and found scales that are not microscopic and that do satisfy the halachic requirement. It seems he was under the impression that Rabbi Efrati was concerned that the scales were too small. Rabbi Di Segni (“Guida alle regole alimentari ebraiche” [Roma, 1996], pp. 34 and 42) gives *aguglia* as the Italian name for *Belone belone* and *suro* or *sugarello* as the name for scad (*Trachurus trachurus*) and rules them both kosher.

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subspecies (*Belone belone gracilis*) that is native to the Mediterranean and eastern Atlantic (Figure 3D). When hooked, it often “dances” on the surface trying to free itself; it is surprisingly strong, and puts up a good fight. Needlefish have fairly deciduous scales, and are kosher. One problem with identifying the fish of the *Knesset haGedolah* with the needlefish is that it is relatively small, not weighing more than a few hundred grams,<sup>94</sup> while it is presumed that the *Knesset haGedolah* was discussing a larger fish. There is another, much larger, species of needlefish (*Belonidae*) in the Mediterranean, *Tylosurus acus imperialis*. The IGFA record for the closely related Pacific *Tylosurus pacificus* is 5.1 kilograms.<sup>95</sup> The problem with identifying the fish of the *Knesset haGedolah* with these fish is that they are called “needlefish” for a reason – they all look like they have small needles, not swords, and it would be strange for the *Knesset haGedolah* to have called them the “fish with the sword.” On the other hand, others do refer to the needlefish as “swordfish.” In Portuguese, the needlefish is called *fische espada* [=swordfish], while swordfish is called *espada* or *espadarta*. The reason needlefish is called “swordfish” in Portuguese is because it looks like a sword, not because it bears a sword. Yet the *Knesset HaGedolah* calls his fish “*dag ba'al hacherev*” – the fish with the sword, not that the fish itself looks like a sword. Thus, it is unlikely he was referring to *Belone belone*.

Another possibility is the spearfish (*Tetrapturus*). Some species, such as the Mediterranean spearfish (*Tetrapturus belone*), are found in the Mediterranean (Figure 3B). However, it is very similar to marlin with a shorter snout; so similar that some scientists would prefer to classify them closer together. In addition, it is a fairly rare fish – so much so that the average fisherman catching one would probably think he just had another marlin. Its bill is quite short, about 18 percent of its body length; such that it is unlikely the *Knesset haGedolah* would refer to such a fish as the “fish with the sword.”

However, there is support for the contention that the *Knesset haGedolah* could have been referring to a fish other than the swordfish when he talked about “a fish with a sword.” In Italian, the Mediterranean spearfish is known, in addition to other names such as *aguglia imperiale*, as the *pesce spada imperiale*, the imperial swordfish. We thus see that other species are sometimes referred to with a permutation of “swordfish” and it is possible that the *Knesset haGedolah* could

94 The IGFA record garfish weighed 700 grams and was caught at La Teste, France, in 2002.

95 See W.F. Smith-Vaniz, B.B. Collette, and B.E. Lockhurst, “Fishes of Bermuda: History, Zoogeography, Annotated Checklist, and Identification Keys,” *Amer. Soc. Ich. Herp., Spec. Publ.* 4 (1999), p. 167, quoting Colonel Drummond-Hay, 1847.

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have called another fish the “fish with the sword.” Rabbi Riccardo Di Segni (“Guida alle regole alimentari ebraiche,” [Roma, 1996], pp. 34, 47) rules in two places that Mediterranean spearfish (*Tetrapturus belone*) is prohibited; while in another location (p. 38) notes that it is controversial.

In contrast to all the above possibilities, there is also the possibility that the *Knesset haGedolah* was really referring to the swordfish. There is no question that the swordfish was hunted, probably by harpoon, and eaten well before the 17th century. Pliny (23-79 CE), a Roman historian, naturalist, and administrator, mentioned swordfish in his *Naturalis Historia*.<sup>96</sup> “The swordfish called in Greek *Xiphias*, that is to say in Latin *Gladius*, a sword, has a beak or bill sharp pointed, wherewith he will drive through the sides and planks of a ship... .” The Greek historian and grammarian Athenaeus (c. AD 200) wrote that swordfish were salted in Byzantium following the decline of the Roman Empire. “When you come to Byzantium,” he wrote, “take a piece of salt swordfish, and choose a slice of the back nearest to the tail.” He noted that swordfish were cut into pieces and underwent different types of processing before being sold under different names. Salted swordfish in Byzantium was prepared using the same methods employed by fishermen in Sicily during the time of the Roman emperors.<sup>97</sup> It is thus plausible that the talmudic rabbis were familiar with swordfish. There is documented swordfishing in the Byzantine era<sup>98</sup> and in the eleventh century.<sup>99</sup>

Turkey, home of the *Knesset haGedolah*, is not today among the major harvesters of swordfish (#17 worldwide), but about 292 metric tons were caught there in 1994. Swordfish is extremely popular in both Spain (#2) and Italy (#4), where about 15,000 and 8,000 tons respectively are landed annually. Greece (#10) caught about 1,600 metric tons in 1994.

The *Knesset haGedolah*, of course, did not provide the scientific name of the fish under discussion, nor did he leave pictures of it. It can be argued, as Rabbi

96 Cited in Bernard Ludwig Gordon, *The Secret Lives of Fishes* (Book & Tackle Shop, 1977), p. 20.

97 See J.K. Smidth, U.S. Commission of Fish and Fisheries, *Report of the Commissioner for 1873-4 and 1875* (Washington, DC: Government Printing Office, 1876). I thank William B. Folsom of NOAA for this source.

98 See Gilbert Dragon, “Poissons, Pecheurs et Poissonniers de Constantinople,” *Constantinople and Its Hinterland: Papers from the 27th Spring Symposium of Byzantine Studies* (Oxford, April 1993), ed. Cyril Mango and Gilbert Dagron (Aldershot, England: Variorum, 1995), pp. 57-76 (ISBN 0-86078-487-8). I thank Harlan Walker for this source.

99 See the illuminated manuscript in *The Treasures of Mount Athos*, Vol. II (Athens: Ekdolike Athenon S.A., 1975), p. 226.

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Tendler did, that the *Knesset haGedolah*'s fish was not *Xiphias gladius*. However, the *Knesset haGedolah* notes that, in the vernacular, the fish he was discussing was called *pishe ishpada*. This name is quite similar to the common name for *Xiphias gladius* in Italy, *pesce spada*, and to the common name in Algeria and in several Spanish- and Portuguese-speaking countries, *pesce espada*.<sup>100</sup>

Increasing the likelihood that the *Knesset haGedolah* was referring to the swordfish is his report that it was a widespread custom to eat the “fish with the sword.” To this day, Jews in several Mediterranean countries commonly eat swordfish based on his ruling and, among non-Jews in the region, it is routinely eaten. To postulate that the *Knesset haGedolah* was referring to another fish would require asserting that the widespread custom among the Jews of his time died out and another, erroneous, popular custom developed – a rather unlikely scenario.

The most serious problems with the swordfish's candidacy to be the *Knesset haGedolah*'s fish are that, in contrast to the fish in the *Knesset haGedolah*'s story, it does not seem to shed any scales on being landed. It also seems to be too large a fish to have been wrapped up in the dark cloth. A possible solution to these difficulties may be the following. Most harvested swordfish are large, nearly scaleless, adults. However, occasionally, small specimens are caught. Moreover, according to Gordon:

Juvenile swordfish are common in the Mediterranean, and are frequently captured in the mesh of seines and traps. Swordfish as small as a 1/2 pound are sometimes found in the fish markets in southern Italy. The meat of the young swordfish is highly prized along the shores of the Mediterranean and said to be perfectly white, compact, and of delicate flavor (Gordon, pp. 21-22).

If this were also the case three hundred and fifty years ago in the *Knesset haGedolah*'s Smyrna, this would answer the difficulties posed to the swordfish hypothesis. We could posit that the *Knesset haGedolah*'s fishermen caught smaller, scaled, juvenile swordfish in nets into which a black cloth could be placed on which the scales could peel off.

Alternatively, as suggested above, the *Knesset haGedolah* was not discussing a small fish, but rather a large one not wrapped in but placed on a black cloth that was lying in the large net. The swordfish appears scaleless when landed, consistent with the *Knesset haGedolah*'s fish that sheds its scales.

100 Although these are simply the translation of the word swordfish, it is one more indication that *Xiphias gladius* was and is referred to as *the* “fish with sword” in those parts of the world.

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In addition, as noted at the beginning of this paper, there is yet much to learn about swordfish. A recent study<sup>101</sup> has demonstrated that adult swordfish are actually fully scaled, albeit with highly atypical scales that are not easily detectable, giving the impression of a scaleless fish. Furthermore, examination of a number of adult swordfish has revealed relatively loose scales that could easily fall off into a cloth in a net.<sup>102</sup> Whether these scales are from the swordfish or a contamination still requires further study, but, in either case, the *Knesset haGedolah* could certainly have been referring to those scales.

#### THE HISTORICAL CONTEXT FOR RABBI TENDLER'S SUCCESSFUL CRUSADE

For most of the last three hundred and fifty years, a “fish with a sword” has been defined as kosher. That this fish is what is called today swordfish or *Xiphias gladius* cannot be conclusively proven. However, it seems likely to this author that it is. Supporting this position is the simple fact that until Rabbi Moshe David Tendler examined the kashrut of the swordfish in approximately 1951,<sup>103</sup> there is no written evidence that this position was ever challenged.

There is no question that when the young Rabbi Tendler examined the swordfish fifty-five years ago and declared it not kosher he did so in good faith. His decision was based on the available evidence, and, as he stated:

I discussed the above presented facts with my great teachers, Rav Moshe Feinstein *Shlitah* and Rav Yosef Dov Soloveitchik,<sup>104</sup> *Shlitah*, and they concur with my decision that on the *basis of the evidence presented* [emphasis added], the swordfish (*Xiphias gladius*) is a non-kosher fish (*Jewish Observer*, April 1968, p.15).

His esteemed teachers reached the only decision possible based, as he said, on the evidence that he presented to them. In addition, once Rabbi Tendler was convinced that it was a non-kosher species, he took the vanguard in preventing the consumption

101 J.J. Govoni, M.A. West, D. Zivotofsky, A.Z. Zivotofsky, P.R. Bowser, and B.B. Collette, “Ontogeny of Squamation in Swordfish *Xiphias gladius*,” *Copeia*, 2004:2 (May 2004): 391-96.

102 Personal, unpublished observations.

103 Based on his own testimony in *ha-Pardes*, 40:4 (5726 /1966): 18.

104 There is some question regarding Rav Yosef Dov Soloveitchik's position on this question. Rav Hershel Schachter (Beit Yitzchak [2004]: 30-31) reports that, based on research by Rabbi Professor Shlomo Sternberg (see *BDD* 4:82 and his unpublished manuscript), Rav Soloveitchik had stated that swordfish is kosher.



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of this fish, which would have been in violation of a biblical prohibition.<sup>105</sup> He fought tooth and nail against anyone who challenged his ruling, whether it was the Conservative movement in the United States, the Israeli Chief Rabbi, or the Israeli Chief Rabbinate. Over the years he refined his reasoning, finalizing his position toward the end of the 1960s.

The effort to ban swordfish essentially took place in two geographic locales, the United States and Israel; it succeeded in both places. I will suggest two historical reasons for why Rabbi Tendler's one-man crusade succeeded in uprooting a three hundred and fifty year-old tradition.<sup>106</sup> Firstly, American Orthodoxy had passed its nadir and was on the upswing. There was a feeling of hope, and a sense that Orthodoxy was successfully encountering the dawning scientific age. The OK kashrut certifying agency was named "OK Laboratories" because Rabbi Goldstein believed that he could use modern laboratory techniques to determine kashrut. By the 1960s, religious Jews in the United States as a group were ready to rely on science, and Rabbi Tendler was considered a star. He was Rabbi Moshe Feinstein's son-in-law, a brilliant talmudic scholar in his own right, and a bona fide scientist with a Ph.D. He was determined to seek out the current scientific evidence on all issues and apply it to determine the halakhah. In the case of the swordfish, he indeed read the latest scientific papers, and examined specimens. Based on that data, rather than on the three hundred and fifty year-old tradition or on hearsay, he reached the conclusion that swordfish was not permissible. It was likely the weight of the scientific evidence that played a key role in enabling Rabbi Tendler to prohibit swordfish.

Secondly, and possibly more importantly, in the United States the fight took on an added twist, one that may have greatly aided Rabbi Tendler's crusade. The

105 Consuming non-kosher fish, even accidentally, is considered a grievous sin. It is reported (*Hagahot Ashri to Avodah Zara* 40 [on section 41 to *Avodah Zara*, Chapter 2], citing the Or Zarua') that once Rabbi Ephraim ben Isaac Regensberg (1110-75; see *Encyclopaedia Judaica* 6:812), a contemporary, student, and opponent of Rabenu Tam, permitted a certain fish called the *balbuta* and was then shown in a dream that he had permitted (the equivalent of) insects. The Or Zarua' (*Avodah Zara, S'eif resh*) reports that, upon awakening, Rabbi Ephraim broke all of the dishes that had been used with that fish, retracted his ruling, and forbade the fish. For a discussion of the possible identity of the fish see Dr. Meir Levinger, "On the Identity of the Fish Called Barbuta [balbuta?]" (Hebrew), *Hama'ayan (Tevet 5742)*: 17-18.

106 As stated in the introduction, the suggestion of these historical forces is not intended in any way to imply a judgment regarding the correctness of Rabbi Tendler's arguments. He may indeed be correct, but right does not always triumph and I think that these factors played a role in the triumph of his position.

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kashrut status of the swordfish became a major point of contention between the Orthodox and Conservative movements. This led to a closing of the ranks among the Orthodox such that, very quickly, there were no Orthodox rabbis in the United States<sup>107</sup> who were willing to permit swordfish lest they be tarred as Conservative; this in turn led to the Conservative movement digging in its heels and repeatedly issuing its permissive ruling.

Today, at the dawn of the 21st century, as Orthodoxy in the United States is surging and Conservative Judaism has in many ways abandoned Halakhah and is drifting closer toward Reform, it is difficult to imagine how permeable the border between Orthodox and Conservative Judaism was in the mid-20th century, and how threatened the Orthodox felt. In the years 1946-57, 30 percent of the applicants to the Conservative JTS rabbinical school were graduates of the Orthodox Yeshiva College!<sup>108</sup>

The two main figures in the inter-denominational battle that took place in the American half of this controversy were rabbis Tendler and Klein, and this became a very sore point between them, as can be seen by reading some of Rabbi Klein's personal notes. In a diary entry in January 1966 he wrote:

The last issue of *Ha-Pardes* has an article about swordfish. The author, a certain Rabbi Ephrati of Israel, attacks Tendler and comes to the same conclusion that I did. Tendler's contention that the rabbis who had allowed swordfish confused swordfish with sailfish he considers insulting. He gives a description of both and how to distinguish between the two. I feel vindicated.

Later that year, in a letter to Rabbi Aaron Kirschenbaum of New York, dated 20 October 1966, he wrote:

In one of the issues of the *Young Israel Viewpoint*,<sup>109</sup> Rabbi Feinstein came out with the statement that he was convinced by his son-in-law that swordfish was not kosher. If you read my *teshuva* on swordfish you will find the "scientific" reasoning of his son-in-law, i.e. that he bases his decision on scientific facts and he does not trust other scientists. This kind of convincing is not very valid.

107 This is as opposed to Israel, where the willingness to permit it persisted for longer than in the United States.

108 Marc B. Shapiro, *Saul Lieberman and the Orthodox* (University of Scranton, 2006), p. 16.

109 I have not succeeded in finding this article, but it again demonstrates that Rabbi Tendler was pushing this topic in a multitude of venues.

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The rhetoric and bile of this fight continued, such that eight years later, in a letter dated 30 December 1974, he wrote to Rabbi Siegel:

Swordfish: There are great rabbinic authorities who agree with us in allowing swordfish. In previous statements the opponents claimed that the swordfish had no scales at all. Now they concede that they do but that they are not the kosher type.<sup>110</sup> We assert on good authority that they fulfill all the requirements for the scales of kosher fish.

That Rabbi Klein viewed this as more than just a question of the status of swordfish is evident from other parts of the letter, which he wrote in reply to an article in the Springfield newspaper that included an attack on Rabbi Klein and his response.<sup>111</sup> Later in the letter he wrote:

Furthermore, it all boils down to the fact that in the eyes of our Orthodox clergy no one else is competent in this field to which they claim an exclusive right. It is not that they are generally the *machmirim* and we are often the *meikilim*, but rather that we are denied any competence in any religious area.

As is evident from Rabbi Klein's notes, he felt that the Conservative and Orthodox were fighting for the allegiance of the same halakhic community, and that the swordfish issue was more than just about swordfish but was representative of the fight for the allegiance of practicing Jews. Given that, in that period, the Conservative and Orthodox movements were far closer in practice than they are today, this would have been correct and the Orthodox would have been correct in perceiving the Conservatives as a real threat. Thus, it is not surprising that they reacted by totally delegitimizing any and all Conservative rabbis.

110 Indeed, Rabbi Tandler had modified his position over time, but at this point, six years after Rabbi Tandler's definitive *Jewish Observer* article, Rabbi Sheinkopf, to whom Rabbi Klein was responding, gave Rabbi Tandler's two final reasons why swordfish are not kosher: 1) They lose their scales as they mature and such fish are not kosher; 2) Even the juvenile scales are not of the kosher variety.

111 The specific issues attacked by Rabbi David I. Sheinkopf in the article included the Conservative positions on swordfish, gelatin, cheeses, and eating fish in non-kosher establishments. Eight years later, Rabbi Sheinkopf devoted a 133-page book to the topic of gelatin (D. I. Sheinkopf, *Gelatin in Jewish Law: An Exposition of the Halakhah Pertaining to the Use of Inedible Animal Parts as Sources for Kosher Food* [Bloch Publishing, 1982]), and several years later half a book to the issue (D. I. Sheinkopf, *Issues in Jewish Dietary Laws: Gelatin, Kitniyyot and Their Derivatives* [Ktav, 1988]).

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In this writer's mind, there is little question that both rabbis Tendler and Klein were sincere in their pursuit of the truth. Rabbi Tendler honestly believed that the swordfish did not bear the requisite scales and was therefore non-kosher. He did not wish to state that the *Knesset haGedolah* had erred, and was thus in an uncomfortable position regarding the historically permissive tradition. But he did not allow that to stop him in his crusade to ban this common, non-kosher fish based on his scientific evaluation. Rabbi Klein believed that the *Knesset haGedolah* and all those who cited him had indeed permitted the fish that is known today as the swordfish, and he loathed the suggestion that so many generations of Jews had eaten non-kosher fish. He gathered the relevant information and was convinced that, based on his understanding of the scientific facts, the swordfish indeed met the halakhic requirements and was kosher.

It was this denominational aspect of the debate that ultimately enabled Rabbi Tendler to triumph, and, understanding that, he made the most of that fact. He entitled his magnum opus on the subject, which was published in the *Jewish Observer* in 1968, "Halachic Status of the Swordfish: To Remove a Stumbling Block – a Teshuva with an Epilogue." The first three pages dealt with swordfish. The final 40 percent of the article was a scathing attack on the Conservative movement. In theory, in order to remove the stumbling block of the non-kosher swordfish, there was no need to link this ruling with an attack on the Conservative movement. In practice, Rabbi Tendler realized the great tactical benefit of such an association. And it worked. The permissive position became linked to the Conservative movement; Orthodox rabbis adopted the new, scientific position espoused by Rabbi Tendler, and, in a few short decades, the swordfish was no longer kosher in the United States or Israel. Even the memory that it once had been permitted was quickly forgotten.<sup>112</sup>

This fact notwithstanding, Jews living around the Mediterranean basin, where there was a long-standing living tradition, continued to eat swordfish throughout the period under discussion. Indeed, despite the overwhelming effect of Rabbi Tendler's halakhic crusade on American and most Israeli communities, based on personal phone conversations and email exchanges with several people who reside(d) in Turkey, Gibraltar, Italy, Tunisia, Morocco, and England, it seems that swordfish continued to be eaten until very recently, and possibly still are.<sup>113</sup> Herein,

112 Interestingly, until the summer of 2005 there was still a restaurant in Israel under Orthodox rabbinical supervision that served swordfish.

113 Including Mr. Gedalyah Ga'on who moved from Izmir to Kfar Saba in 1948, and states that his community continued to eat swordfish in Israel. Rabbi Naftali Haleva reports

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we seem to see the triumph of a legitimate *minhag* over the science of the modern halakhists. Indeed, the fact that the existing custom was not uprooted in communities having a custom of eating swordfish, may point to another factor that allowed Rabbi Tendler's crusade to succeed so successfully and completely in America. American Jewry (and, Israeli Jewry too, to some extent) had no firmly rooted local custom of eating swordfish. Therefore, Rabbi Tendler could overwhelm his opponents by turning to scientific evidence. In locales where swordfish had been eaten for centuries, the custom and the tradition of the *Knesset haGedolah's* ruling indeed overcame Rabbi Tendler's interpretation of the Halakhah and science, no matter how technically correct it might have been.

(personal conversation, 30 August 2002) that Jews in Turkey treat swordfish as kosher to this day.

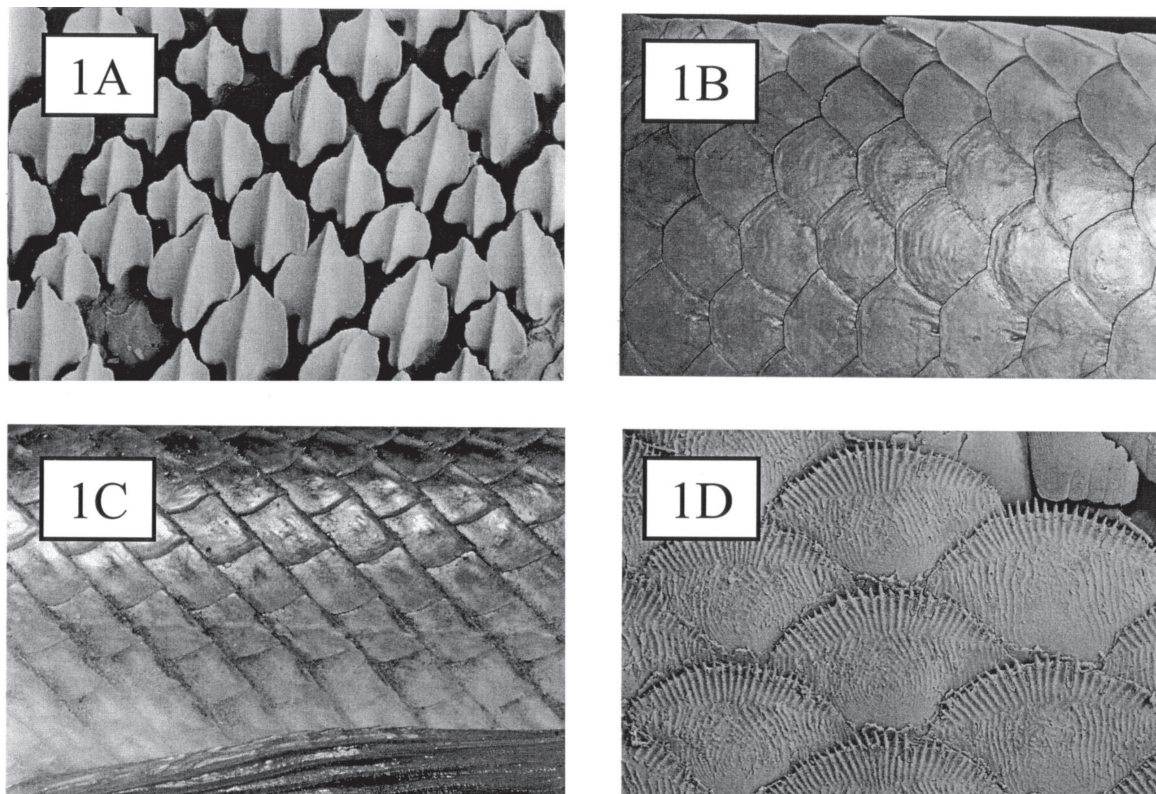
Rabbi Isak Haleva of Istanbul, Turkey, and Rabbi Abraham ben Palti formerly of Istanbul and now of Mexico City, Mexico, both related the following interesting story that happened to them (personal conversations, July 2001). In approximately 1962, then Israeli Chief Rabbi Nissim visited Turkey and was invited to dine at Turkish Chief Rabbi David Asseo's (1914 – 14 July 2002; became Chief Rabbi in 1961, replacing Rabbi Rafael Saban) house. In honor of the esteemed guest they served a delicacy – swordfish. Rabbi Nissim refused to eat, claiming the fish had no scales and was not kosher. Rabbi Asseo rebutted that he had a long-standing tradition from his esteemed predecessors that the fish is kosher and has been eaten by Turkish Jews for generations. Rabbi Asseo and company ate it; Rabbi Nissim refrained. Thus, already in 1962 there were those in Israel treating it as non-kosher.

In Italy there are people who still eat swordfish. Rabbi Riccardo Di Segni (Chief Rabbi of Rome, director of the Collegio Rabbinico Italiano in Rome, and a physician) in "Guida alle regole alimentari ebraiche" (Roma, 1996), gives a list of kosher and non-kosher fish. Unlike any list prepared in the United States in the last fifty years, regarding *pesca spada* (*Xiphias gladius* – swordfish) he writes "controverso" – controversial (pp. 38, 48). In other words, he cannot follow the Israeli and American model of prohibiting it because there is still a segment of the population that treats it as permitted. And, on page 50, he also permits it as long as one is careful to eat only the *Xiphias gladius* and not other similar-looking species. Rabbi Dr. Elio Toaff, the former Chief Rabbi of Rome, reported (personal conversation, 4 October 2001) that in Rome it is eaten, but only after inspecting for scales. In a further communication (email, 8 November 2001) he clarified that one must be cautious before eating swordfish to verify that it is the kosher *Xiphias gladius*. His son, Professor Ariel Toaff, remembers going with his father to the fish market to buy swordfish (conversation, 22 March 2005). On visits in February 2005 and February 2006 to the Rome fish market, the current head of Roman kashrut, Rabbi Pino Arbib pointed out to Dr. Ari Greenspan and me how and where to find scales on a swordfish. He showed us scales and explained that, based on that, they eat swordfish. However, Rabbi Yosef Laras, originally from a Livorna, Sephardic family and now a rabbi in Milan, Italy, reports (conversation, 1 November 2001) that he does not know of anyone who currently eats swordfish. Rabbi A.M. Somekh reported (conversation, 7 December, 2001) that in practice swordfish is not eaten and has not been as long as he remembers.

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To paraphrase those immortal words, “The Password was Swordfish.”<sup>114</sup> For Orthodox Jews in America during the past forty years the swordfish has been the standard-bearer of the “fish that is non-kosher because others had declared it kosher.” It was “the password” that let everyone know that one was on the correct side of the law. In this article the issue has been explored without regard to polemics. The history of how this halakhic revolution came about has been traced through the historical record. This paper will not conclude with any halakhic ruling, but simply observe that a contentious fight has been fought in which both sides struggled to discover the scientific and halakhic truths concerning the kashrut of the swordfish.

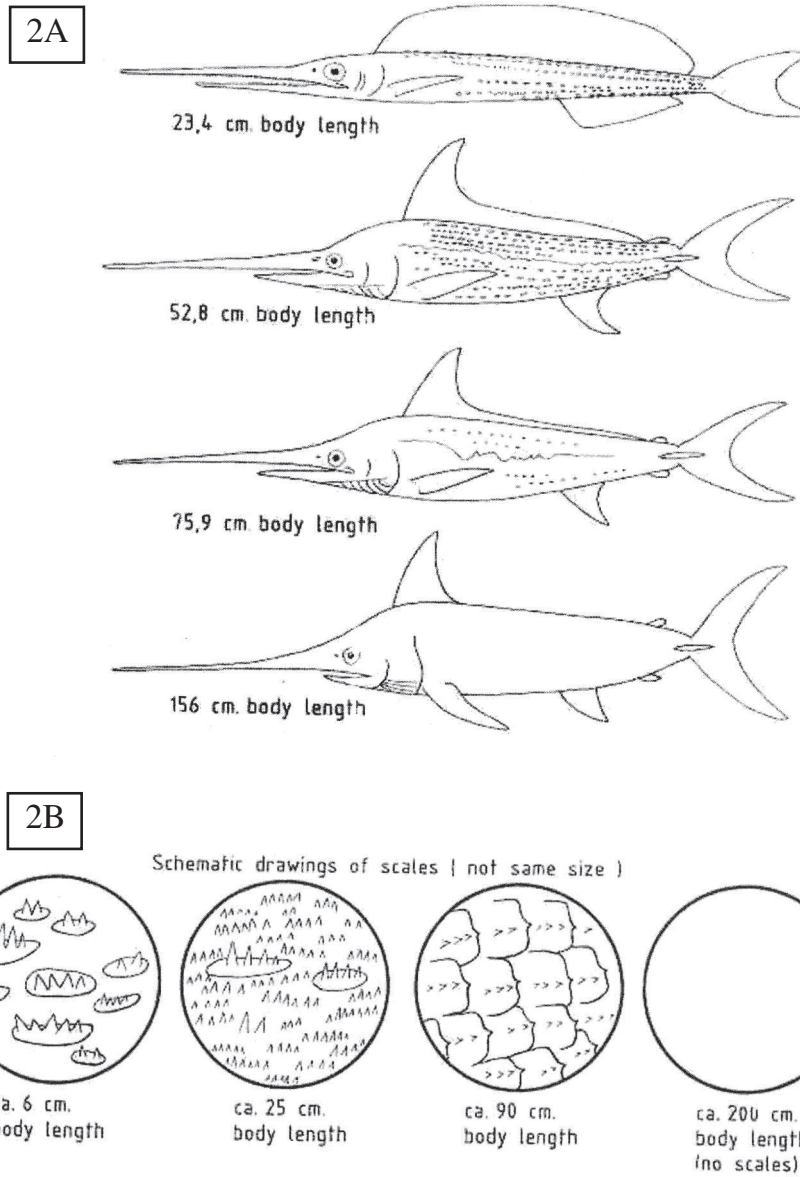
114 Based on the famous quote, “the password is swordfish,” from the Marx Brother’s 1932 movie *Horse Feathers*.



**Figure 1**

Examples of the various types of scale as defined by ichthyologists. The scale types shown are: A) Placoid; B) Cosmoid; C) Ganoid and; D) Ctenoid. Figures A and D are by S. Lindsay © Australian Museum, and figures B and C are by C. Bento © Australian Museum

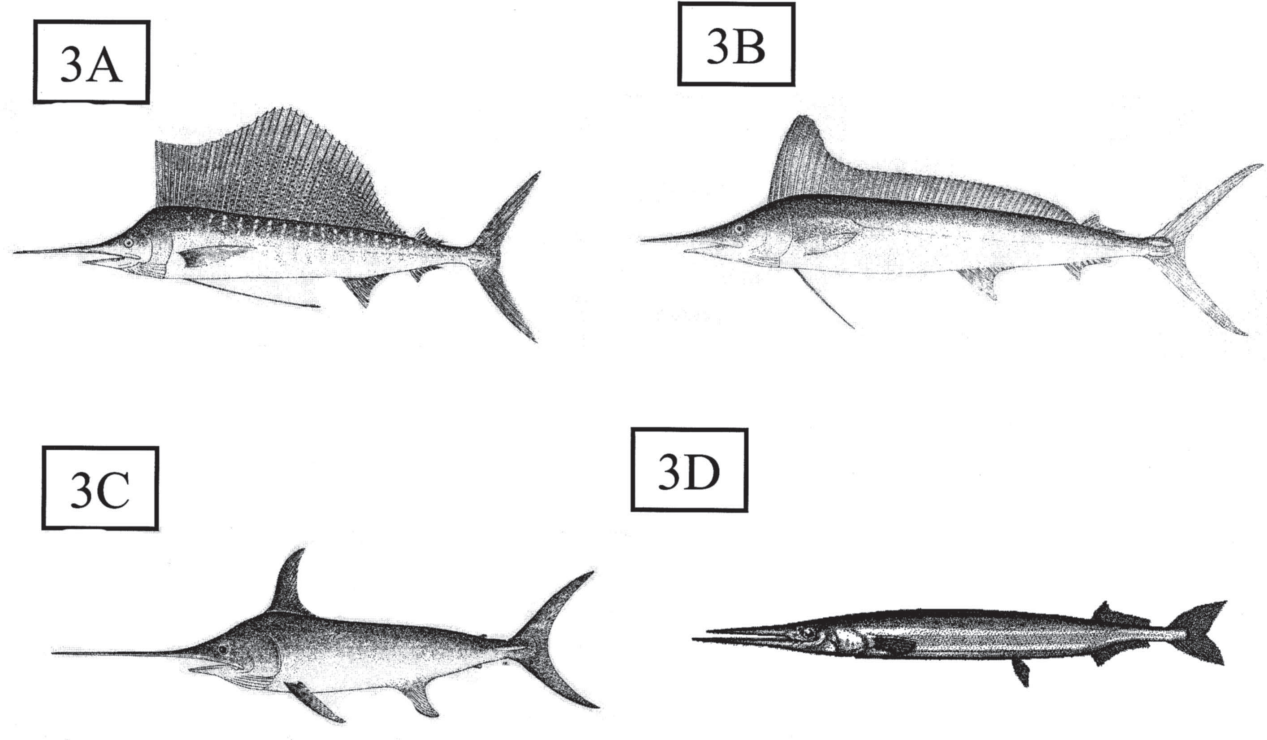
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**Figure 2**

The swordfish undergoes a complex metamorphosis from larva to adult and looks quite different at various stages of development. These changes can be seen on A) the fish as a whole and B) in how its scales look





**Figure 3**

Several examples of fish that have been suggested as the “fish with a sword” of the *Knesset haGedolah*. A) Atlantic sailfish (*Istiophorus platypterus*); B) Mediterranean spearfish (*Tetrapturus belone*); C) swordfish (*Xiphias gladius*); D) needlefish (*Belone belone*).