

# HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

## 178 - EXOTIC CREATURES AND KASHRUT

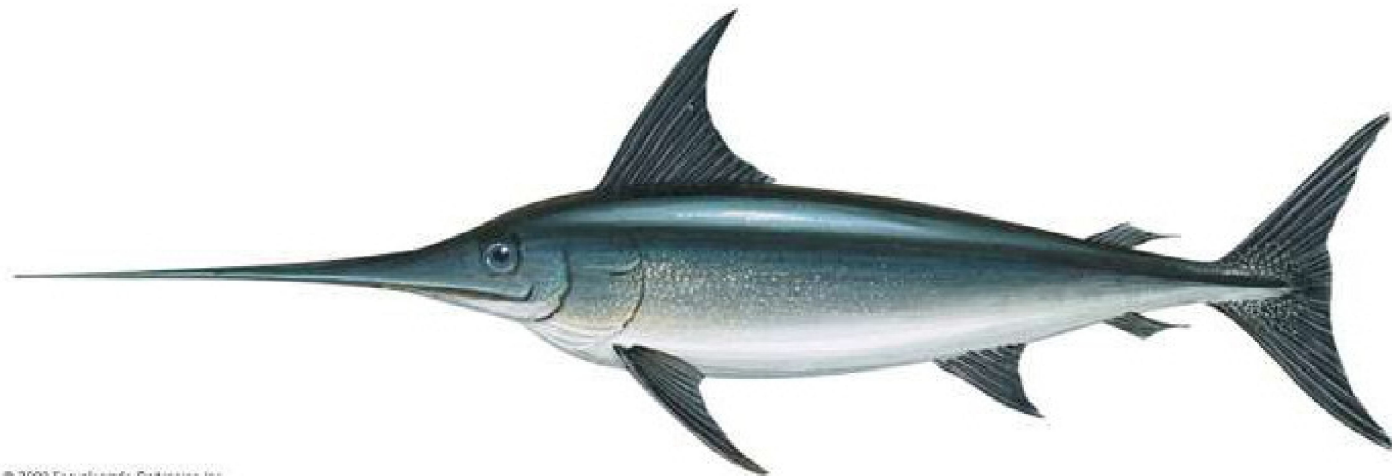
### PART 1 - THE SWORDFISH

OU ISRAEL CENTER - SUMMER 2020

#### A] THE SWORDFISH<sup>1</sup>

Some quick facts about the swordfish (*xiphias gladius*):

- Also called broadbill, but different to the marlin.
- It start life as small as a grain of sand but can grow to over 650kg (1,400lb)!
- Found between surface and 550m (1,800ft) but can go down to 2,000m (6,500ft).
- Sword is not used to spear, but to slash and injure prey.
- Fast swimmers - up to around 25 mph.
- Overfished and endangered in Mediterranean and Pacific. Fully stocked in Atlantic.
- Cannot be kept in aquaria so only observed in the wild - as such not fully understood.
- Oily fish, very popular as food since they make large steaks for grilling.



#### B] THE KASHRUT OF FISH - CHUMASH

1. (ט) אֶת־זֶה תֹאכְלוּ מִכָּל אֲשֶׁר בַּמַּיִם כָּל אֲשֶׁר־לוֹ סִנְפִּיר וְקִשְׁקֶשֶׁת בַּמַּיִם וּבִנְחָלִים אֲתָם תֹאכְלוּ: (י) וְכֹל אֲשֶׁר אֵין־לוֹ סִנְפִּיר וְקִשְׁקֶשֶׁת בַּמַּיִם וּבִנְחָלִים מִכָּל שֶׁרָץ הַמַּיִם וּמִכָּל נֶפֶשׁ הַחַיָּה אֲשֶׁר בַּמַּיִם שֶׁקֶץ הֵם לָכֶם: (יא) וְשֶׁקֶץ יְהִי לָכֶם מִבְּשָׂרָם לֹא תֹאכְלוּ וְאֶת־נִבְלָתָם תִּשְׁקֹצוּ: (יב) כָּל אֲשֶׁר אֵין־לוֹ סִנְפִּיר וְקִשְׁקֶשֶׁת בַּמַּיִם שֶׁקֶץ הוּא לָכֶם:

ויקרא יא-ט-יב

*The Torah discusses the kashrut of fish and sea creatures<sup>2</sup> twice. First, in Vayikra, the verse states that a kosher fish must have two signs - 'snapir' and 'kaskeset'. If it lacks either of these signs it is classed as 'sheketz' - disgusting.*

1. The more comprehensive article on the halachic and hashkafic history of the swordfish is *The Turning of the Tide - The Kashrut Tale of the Swordfish*, by R. Dr Ari Zivotofsky (B.D.D. 19 - Jan 2008). It can be found at <https://jeremy-brown-vpk4.squarespace.com/s/Zivotofsky-Kashrus-of-the-swordfish.pdf> and much of the research and information in that shiur is based on this article. See also

<https://www.jewishpress.com/sections/features/swordfish-a-kashrus-tale-of-legends/2018/09/05/> and

<http://www.talmudology.com/jeremybrownmdgmailcom/2018/2/18/avodah-zarah-39a-is-swordfish-kosher-2jlds>

2. Although the expression 'dag' sometimes refers to all creatures in the sea, for the kashrut of fish, most poskim rule (based on Rambam Hilchot Ma'achalot Asurot 12:2) that 'dag' refers only to a creature that basically resembles a fish. It excludes small sea bugs, sea horses, sea mammals (such as dolphins and seals) and frogs.

To download more source sheets and audio shiurim visit [www.rabbimanning.com](http://www.rabbimanning.com)

2. אֶת־זֶה תֹאכְלוּ מִכָּל אֲשֶׁר בַּיָּם כָּל אֲשֶׁר־לוֹ סַנְפִיר וְקַשְׂקֶשֶׁת תֹאכְלוּ: וְכָל אֲשֶׁר אֵין־לוֹ סַנְפִיר וְקַשְׂקֶשֶׁת לֹא תֹאכְלוּ טָמֵא הוּא לָכֶם:

דברים יז:ט-י

*The prohibition is repeated in Devarim. Again, the same two signs are required. In the absence of either of these, the fish is called 'tamei'.<sup>3</sup>*

3. סַנְפִיר - אֵלו שֶׁטַּט צֶהֶס: קַשְׂקֶשֶׁת - אֵלו קְלִיפִים הַקְּצוּעִים צו, כְּמוֹ שְׁנֵאמַר (שְׁמוּאֵל א יז:ה) וְשָׁרְיוֹן קַשְׂקֶשֶׁים הוּא לְבָשׁ:

רש"י ויקרא יא:ט

*Rashi on Chumash explains that 'snapir' is the fin<sup>4</sup> which helps it to swim. 'Kaskeset' is a reference to the covering which is fixed to the fish, as indicated by the use of the word for the armour of Goliath.*

4. וְשָׁרְיוֹן קַשְׂקֶשֶׁים - כְּמִין קַשְׂקֶשֶׁת דְּגִים עֲשׂוּיִן מִצְרָזֵל נוֹפְלִים עַל גַּב הַשָּׂרְיוֹן (ס"א נְקֻצֵי הַשָּׂרְיוֹן) קַשְׂקֶשֶׁת לְכָל נְקֻצָּ:

רש"י שְׁמוּאֵל א יז:ה

*In Shmuel 1, Rashi explains that the kaskesim on Goliath's armor were placed on the back of the armour, or according to another girsa in Rashi, were small pieces covering the holes in the armour.*

## C] THE KASHRUT OF FISH - TALMUD

5. וּבְדָגִים כָּל שֵׁשׁ לוֹ סַנְפִיר וְקַשְׂקֶשֶׁת. רַבִּי יְהוּדָה אֹמֵר שְׁנֵי קַשְׂקֶשֶׁיִן וְסַנְפִיר אֶחָד. וְאֵלו הֵן קַשְׂקֶשֶׁיִן - הַקְּבֻעִין בּו, וְסַנְפִירֵיִן - הַפּוֹרְחֵי בְהוּ:

משנה מסכת חולין פרק ג משנה ז

*The Mishna in Chulin defines the kashrut signs of fish. The Tana Kama rules that the fish need only have 1 fin and 1 scale. R. Yehuda requires 1 fin and 2 scales.<sup>5</sup> The Mishna also rules that 'kaskasim' are fixed to the fish, and 'snapir' is the limb used by the fish to glide/swim in the sea (as opposed to to a primitive limb used to crawl on the ground). We will examine below what is meant by 'fixed' to the fish in this context.*

6. כָּל שֵׁשׁ לוֹ קַשְׂקֶשֶׁת - יֵשׁ לוֹ סַנְפִיר. וְיֵשׁ שֵׁשׁ לוֹ סַנְפִיר וְאֵין לוֹ קַשְׂקֶשֶׁת.

משנה נדה פרק ו משנה ט

*The Mishna in Nidda rules that, although these signs are listed separately in Chumash, in fact, any fish that has scales also has fins. However, there are fish with fins that do NOT have scales. As such, one only has to identify the scales on a fish to know that it is kosher. Finding fins without scales will not however suffice.*

7. אֵלו הֵן קַשְׂקֶשֶׁיִן שְׁמֵלּוּבֵשׁ בְּהוּ, וְסַנְפִירֵיִן שֶׁשֶׁט בְּהוּ ...

תוספתא מסכת חולין (צוקרמאנדל) פרק ג הלכה כז

*The Tosefta explains that the kaskesim are a 'malbush' - clothing - to the fish. The 'snapir' is used by the fish to swim.*

8. גַּמ'. כָּל שֵׁשׁ לוֹ קַשְׂקֶשֶׁת - דָּג טָהוֹר. יֵשׁ שֵׁשׁ לוֹ סַנְפִיר וְאֵין לוֹ קַשְׂקֶשֶׁת - דָּג טָמֵא. מִכְדִּי, אֵנָּן אֶקַּשְׂקֶשֶׁת סַמְכִינָן, סַנְפִיר דְּכַתְּבֵי רַחֲמָנָא לְמָה לִּי? אֵי לֹא כְּתֵב רַחֲמָנָא סַנְפִיר, הוּא אֲמִינָא: מֵאֵי קַשְׂקֶשֶׁת דְּכַתְּבֵי - סַנְפִיר, וְאֲפִילוּ דָּג טָמֵא, כְּתֵב רַחֲמָנָא סַנְפִיר וְקַשְׂקֶשֶׁת. וְהִשְׁתָּא דְּכַתְּבֵי רַחֲמָנָא סַנְפִיר וְקַשְׂקֶשֶׁת מְנַלָּן דְּקַשְׂקֶשֶׁת לְבוּשָׁא הוּא - דְּכַתְּבֵיב (שְׁמוּאֵל א יז:ה) וְשָׁרְיוֹן קַשְׂקֶשֶׁים הוּא לְבָשׁ. וְלְכַתְּבֵי רַחֲמָנָא קַשְׂקֶשֶׁת וְלֹא בְּעֵי סַנְפִיר! א"ר אַבְהוּ, וְכֵן תַּנָּא דְּבִי רַבִּי יִשְׁמַעְאֵל: (יִשְׁעִיָּהוּ מִבְּכֵא) יִגְדִּיל תַּנְּךָ וְיִאֲדִיר

נדה נא:

*The Gemara confirms that all fish with scales are kosher. It suggests that Torah mentions both signs to ensure that we do not also translate 'kaskeset' as a fin<sup>6</sup>, and thus permit a fish with only fins. The Gemara rejects this on the basis that the meaning of kaskeset - as an armour-like covering - is clear from Tanach!<sup>7</sup> The Gemara concludes that the inclusion of the extra word 'snapir' is 'belt and braces' - to avoid any possibility of mistake.<sup>8</sup>*

3. This is not a reference to halachic tumah since no sea creature is tamei or transfers tumah of this kind. Tamei here means 'not kosher', and is used in this way elsewhere in Chumash (eg Vayikra 11:4-5).

4. There is a discussion in the poskim as to whether a fish with a leg in place of a fin could be kosher. Most poskim rules that cannot since it lacks the basic 'tzura' of a fish.

5. The halacha follows the Tana Kama, although if there is only one scale there are different opinions as to where it has to be located (see Tiferet Yisrael #95 and below).

6. Perhaps a subordinate type of fin.

7. Tosafot (Chulin 66b s.v. kol) explain that the meaning was known through a tradition from Sinai. As such, the verse in Tanach is a 'gilui milta' - confirming the existing position.

8. Note that if the two signs CREATE the kosher status of the fish, that may be why the Torah mentions both. The fact that every fish with scales also has fins is simply a practical guide to keeping kosher. However, if certain fish are intrinsically, 'metaphysically kosher', the two signs in the Torah are simply for identification, and the question of the Gemara as to the

9. תנו רבנן: אין לו עכשיו ועתיד לגדל לאחר זמן, כגון הסולתנית והעפיץ - הרי זה מותר; יש לו עכשיו ועתיד להשיר בשעה שעולה מן הים, כגון אקונס ואפונס, כטספטייס ואכספטייס ואוטנס - מותר

עבודה זרה לט.

*The requirement for scales does not apply at all times in the fish's life-cycle. For instance, Chazal here teach two new principles:*

(i) *if the fish is young and does not yet have scales, but would grow them later, it is permitted even before the scales grow. The examples given are the sultanit and afixatz fish.*

(ii) *If the fish had scales, but they fell off when the fish was caught and taken out of the water, it is also kosher. The examples given<sup>9</sup> are the akunas, afunas, ketasafiyas, achsafiyas and otunas<sup>10</sup> fish.*

## D] OTHER KASHRUT SIGNS FOR FISH?

- As we have seen, the halacha lays down only two signs for the kashrut of fish - fins and scales - which effectively is only one - scales.
- Mesora - unbroken tradition - is a key component for the kashrut of birds, but most poskim rule that is irrelevant to fish.<sup>11</sup>
- Some secondary signs are sometimes given for non-kosher fish, including: ventral mouth, black roe, heterocerclic tail (divided into unequal halves). NONE of these are definitive.
- There is NO rule that a predatory fish cannot be kosher.
- Names are irrelevant and often unhelpful. Many fish are named after animals - eg alligator, boar, buffalo, cat, dog, goat, goose, eagle, pig, wolf and zebra fish. None of these names are pertinent to their kashrut status. Also, common names can be misleading. Salmon is kosher but rock salmon is not. The names 'cod' and 'perch' are used colloquially for many different unrelated species.

## E] HALACHIC REQUIREMENTS FOR KOSHER SCALES

### E1] VISIBLE SCALES

10. דע שדבר פשוט הוא דבדבר שצריך ראית עין אינו מועיל אם רואין ע"ז זכוכית המגדלת הראיה, וצריך לראות בעין עצמה. וכן הוא בענינים שבכל התורה כולה במה שצריך ראית עין

ערוך השולחן יורה דעה סימן פג סעיף טו

*The halacha is that scales must be big enough to be seen with the naked eye (at a normal distance)<sup>12</sup>. If the scale requires magnification to be visible, it is not valid.<sup>13</sup>*

### E2] ONE SCALE IS SUFFICIENT

11. .... ואפילו אין לו אלא סנפיר אחד וקשקשת אחת, מותר. .... הגה: וי"א דאין להחיר זקשקשת אחת, רק כשהיא עומדת תחת לחייו או זנבו או סנפירו, וטוב להחמיר.

שולחן ערוך יורה דעה הלכות בהמה וחיה טהורה סימן פג סעיף א

*The Shulchan Aruch rules that even one scale, anywhere on the fish, is sufficient. The Rema rules that if the fish only has one scale, it has to be under the cheek, tail or fin.*

### E3] WILL HAVE SCALES IN THE FUTURE, OR HAD THEM IN THE PAST

12. .... ואפילו אין לו עתה, ועתיד לגדלם לאחר זמן או שהיה לו בעודו במים והשירן מיד בעלותו ליבשה, מותר ...

שולחן ערוך יורה דעה הלכות בהמה וחיה טהורה סימן פג סעיף א

*The Shulchan Aruch rules that a young fish is kosher even if it has no scales but will grow them when older. Also, the fish is kosher if it had scales but they fell off when it was caught.*

need for 'snapir' is more relevant.

9. The mefarshim differ as to whether these are the Greek names for the fish (Rabbeinu Chananel here) or the Persian names (Rashi Chulin 66a).

10. Possibly tuna fish (see Aruch). The kashrut issues of commercial production of tuna are separate to this discussion. All poskim agree that tuna is a kosher fish, but the concern is that other non-kosher species could be included (accidentally or intentionally) in the canned tuna.

11. R. Issur Yehuda Unterman does however take this into consideration in a 1961 teshuva permitting swordfish. He understands that the fish referred to by the Kneset HaGedola was indeed the swordfish and notes the unbroken tradition of kashrut to modern times.

12. There are many sea creatures with microscopic scales, such as many eels.

13. This is the case with all halachic requirements. One must be able to see them with the naked eye for them to be halachically significant (eg insects, spots on bedikat, etrog etc).

- The Shulchan Aruch does not deal with the case of a fish which did have scales when juvenile, but lost them when older. It also does not discuss the status of a fish which had kosher (peelable) scales when young, but whose scales became fixed and non-peelable when older.
- There is no halachic precedent for a creature which is kosher<sup>14</sup> when young but becomes treif as it ages (unless sick).<sup>15</sup>

#### E4] SHAPE IS NOT RELEVANT

- Scales come in all shapes and sizes. As long as the other halachic factors are satisfied (eg visible and peelable) the size and shape is not relevant.<sup>16</sup>

#### E5] BIOLOGICAL CLASSIFICATION IS NOT DEFINITIVE

- Marine biology has many classifications for scales.<sup>17</sup> Although these sometimes correlate with a halachic characteristic, they often do not and CANNOT be used to determine the kashrut status of the fish.

#### E6] FIXED BUT PEELABLE

13. .... ואלו הן קשקשין - הקבועין בו ....

משנה מסכת חולין פרק ג משנה ז

*As we saw above, the Mishna rules that scales must be 'fixed' to be halachically valid.*

14. (ט) סנפיר וקשקשת - סנפירים אלו השט בהם. קשקשת, אלו הקבועים בו. לשון רש"י. וכן הוא בגמרא במסכת חולין (נב). אצל לא תצין מלשונם שהן קבועים בגופן ממש ודבוקים בעור הדג, אצל קראום "קבועים" שאינן נדין ממנו ולא מזדעזעין בו כסנפיר. והם הקליפין העגולים שגלדן דומה לאפורן, שהם נפשטין מעור הדג זיד או צסכין. אצל כל שהוא קבוע ודבוק בעור הדג ואינו נפרד מן העור כלל אינו קשקשת, ובעליו אסור הוא. ולכך אמרו בגמרא (שם ס:): קשקשת לבושא הוא, ולשון תוספתא (חולין פ"ג ה"ט) אלו הן הקשקשים שמלוכש בהן, וסנפירים ששט בהן: וזכו תרגומו של אונקלוס שאמר קליפין, שהן קליפין שעל העור, נפשטין ונקלפין ממנו כקליפי האילנות והפירות, מן ענין הכחוצ שאמר (שמואל א ח:ח) וְשָׂרְיוֹן קִשְׁקָשִׁים הוּא לְבוּשׁ. שהשיונות כולן עשויים מן הטבעות, ויש שעושים בהם קליפות לסתום פיות הטבעות שלא יכנס בהן חץ דק, והקליפין בהם נקראו קשקשים. ולכך הזכירו חכמים בגמרא צפרק חלק (סנהדרין נה) לבושי שריון קליפה:

רמב"ן ויקרא יא:ט

*Ramban on Chumash explains that 'kavua' means that the scales is attached to the skin to the extent that it does not flap around like the fin as the fish moves. But if it actually forms part of the skin of the fish, this is not halachically valid. He compares it to the peel of a fruit, or (as the Tosefta calls it) a 'levush' - sheath/clothing. He also explains that the kaskeset on chain mail is designed to close up the holes in the rings.*

- This explanation of the Ramban is not found explicitly<sup>18</sup> in earlier sources<sup>19</sup>, but it is generally accepted thereafter as the halachic definition of the fish scale.

14. Most poskim understand, based on the Chatam Sofer, that the kashrut of fish is species-dependant, and not dependant on the individual fish. Thus, if an individual fish from a kosher species lacked a scales or fin, it would still be kosher.

15. Rav Zalman Nechemia Goldberg and R. Avigdor Nevensahl rule that fish which have scales when young and then lose them when mature remain kosher. (See Zivotofsky p 19)

16. See Shu't Tzemach Tzedek 61.

17. See <https://oukosher.org/blog/consumer-kosher/mesorah-fish/> where the OU kashrut staff write the following:

"There are five different types of scales: placoid, cosmoid, ganoid, ctenoid and cycloid. Placoid scales are found on many different types of sharks (sharks do have scales, though they rip the skin when removed and thus cannot be considered "kaskeses"), cosmoid are found on lungfish, ganoid are found on sturgeon, gars and bowfin. These three types of scales are rarely found on kosher fish, though I mentioned bowfin (Amia Calva) as at least one example of a kosher fish with ganoid scales. The other two types, cycloid and ctenoid scales, are the ones found on most kosher fish. The scale classifications are based on varying factors, such as the makeup of the scale, its relationship to other scales on a fish, and the structure of the growth rings on the edge of a scale (experts can determine how old a fish is by counting rings on its scales, much as they would rings on a tree).

Some Rabbis have postulated that any fish bearing cycloid or ctenoid scales is a kosher fish. They would say that all one needs to do is confirm that a certain species of fish has one of these types of scales to know that it is kosher. There are several reasons why one should disagree with this assertion. One reason, mentioned above, is that some fish contain cycloid scales that are not visible to the naked eye. One example that we encountered in the OU office was a type of sandeel (Ammodytes Americanus) that supposedly had cycloid scales, though all the experts in our office who viewed samples could not see anything on the fish large enough to consider it as having "kaskeses". Another reason why defining the type of scale is not sufficient to know if it is kosher, is that some fish have embedded scales. American Eel (Anguilla Anguilla) is known to have scales that could be "kosher" if not for the fact that they are deeply embedded into the skin. The same is true for burbot (Lota Lota). One must also bear in mind that there is nothing intrinsic to the definition of any type of scale that requires it be able to be removed from the fish without ripping the skin, as is required for "kaskeses". Even if anecdotally one can note that a great number of fish bearing cycloid and ctenoid scales tend to have ones that can qualify as "kaskeses", one cannot claim that this would be a sufficient determinant of kosher status."

18. The Vilna Gaon (YD 83:1) understands that this is what is meant by the Tosefta in Chullin (above) which says that the scales are a 'malbush', which implies they can be peeled off.

19. Nor is it found in the classic halachic codes - Rif and Rambam, Rosh, Tur.

15. סימני דגים מפורשים בתורה: כל שיש לו סנפיר וקשקשת, טהור. וסנפיר, הוא ששט בו. וקשקשת, הן הקליפות הקבועות בו. כגון: ודוקא שהם נקלפים ציד או בכלי, אבל אם אי אפשר לקלפן מעור הדג, לא מקרי קשקשת (המ"מ פ"א דמ"א).

שולחן ערוך יורה דעה הלכות בהמה וחיה טהורה סימן פג סעיף א

*The Shulchan Aruch rules (based on the Magid Mishna) that scales are halachically valid only if they are soft enough to be peeled off by hand or with a tool, without tearing the skin.*

16. צו הקבועין בו. שאינו מנענע אותן כששט. ונאפשר לפע"ד כוונת המשנה לאפוקי כשהן מגוף הדג עלמו, כעין שטיינבוטטען שלנו שיש לו על גביו כעין תנוכים קשים ועצים שאי אפשר לטלן ממנו רק בחזק. נמצא שאינן כדבר הקבוע בו, רק מגוף הדג בעלמו הן, ואין נקראים קשקשין:

תפארת ישראל - יבין מסכת חולין פרק ג אות צו

*The Tiferet Yisrael<sup>20</sup> also understands that 'fixed' comes to teach that the scales must be attached to the skin, but not an actual part of the fish. He refers to a fish called steinbotten<sup>21</sup> which has small lobes attached to its body which can only be removed with difficulty. These are not considered to be halachic scales.*

17. תשובה .... כבוד מוה"ר צבי הירש סג"ל אב"ד דק"ק ט"ו

מכתבו הגיעני מחרת יו"כ עם הדג. והנה אשר שאל אם לסמוך על עדות המעידים האוכלים אותו במקומם .... אני נסיתי דג זה ויש לו שתי שורות קשקשים, שורה אחת בצד ימין ושורה אחת בצד שמאל. ומה בכך שאינן נקלפים ביד והלא נקלפים בכלי. וגם נסיתי לאחר ששרה בכלי שני במים מן האפר שקורין לויג<sup>22</sup> כמו שלש שעות נקלפו ביד. ולדעתי אפילו לא היו קלפים קודם שריה כלל רק אחר שריה הנ"ל ג"כ הוא סימן טהרה. ואין לומר שהשריה במים עזים הנ"ל גרם לו שיקלפו דמה בכך סוף שריון קשקשים הוא לבוש. וגוף החומרא שהמציא רבינו הרמב"ן בפירוש התורה בפ' שמיני - שאם אינם נקלפים כלל לא נחוש בו לסימן טהרה - אלמלא אמרה אדם אחר הייתי דן כנגדו. ומה בכך שאינם נקלפים; והיכן הוזכר הקילוף בבבלי או בירושלמי או בת"כ? אדרבה במשנה אמרו קשקשים הקבועים בו. והרמב"ן שם בפירוש נדחק בזה וכתב אם אין נקלפים לא נקרא לבוש שהרי הם דבוקים בעור. ואני אומר שהעור עצמו וגם הבשר נקרא לבוש, וכן כתיב עור ובשר תלבישינו כו'. ויש לדחות קצת:

שו"ת נודע ביהודה מהדורא תניינא - יורה דעה סימן כח

*Nevertheless, there was some later halachic push-back against this chumra of the Ramban. The Node Beyehuda calls into question the source of the Ramban, and is certainly prepared to limit the requirement in many ways. He was even prepared to soak a fish skin in caustic solution to see if the scales came off. If they did - that was good enough to declare the species kosher!<sup>23</sup>*

• The poskim debate whether the scales have to be partially detached with a loose flap or can be fully connected around the whole scale. Most kosher fish have scales which are only partially attached.<sup>24</sup>

## F] DOES THE SWORDFISH HAVE SCALES?

- Marine biologists classify swordfish as having 'scales' when young<sup>25</sup> but not when older. The questions are (i) whether this is sufficient for kashrut; and (ii) whether these biological 'scales' are considered acceptable in halacha?
- One of the world experts of the kashrut of swordfish is Rabbi Dr. Ari Zivotofsky.<sup>26</sup> In a 2004 research paper,<sup>27</sup> he describes the unusual nature of swordfish scales.

20. R. Yisrael Lifschitz - 19C Danzig.

21. A reference to the turbot fish - turbot *Scophthalmus maximus* - which has tubercles in its skin. These may be called 'scales', but are not halachically valid.

22. Lye - a metal hydroxide traditionally obtained by leaching wood ashes, or a strong alkali which is highly soluble in water producing caustic basic solutions. It is most commonly sodium hydroxide (NaOH), but historically has been used for potassium hydroxide (KOH).

23. This issue became a major controversy in the 1780s and 90s. Some poskim rejected the leniency of the Node Beyehuda and claimed that he had retracted his psak (a claim denied by his family). The situation got the point that some rabbis who insisted on leniency were accused of being Sabbateans!

24. As such, they are smooth when rubbed in one direction but feel sharper, and sometimes flake off, when rubbed in the other direction.

25. Juveniles hatch with scales that remain until the swordfish reaches a length of about 1m (<https://marinebio.org/species/swordfish/xiphias-gladius/>).

26. Rabbi Zivotofsky is a professor of neuroscience at Bar-Ilan University. He learned in Yeshivat Har Etzion and has degrees from the Cooper Union, Hofstra University, NJIT, Revel Graduate School of YU, and Case Western Reserve University. After a post-doc at the National Institutes of Health, he made aliyah in 2000. He is trained as a shochet and co-organizes the 'Mesorah Dinners' in Israel, NY, LA and Chicago. In addition to his scientific publications, he writes a regular column in the OU's Jewish Action, and has published articles in Mishpacha, Tradition, the Journal of Halacha and Contemporary Society, Hakira and Tchumin. He has been a tour guide in Ir David for the last 10 years.

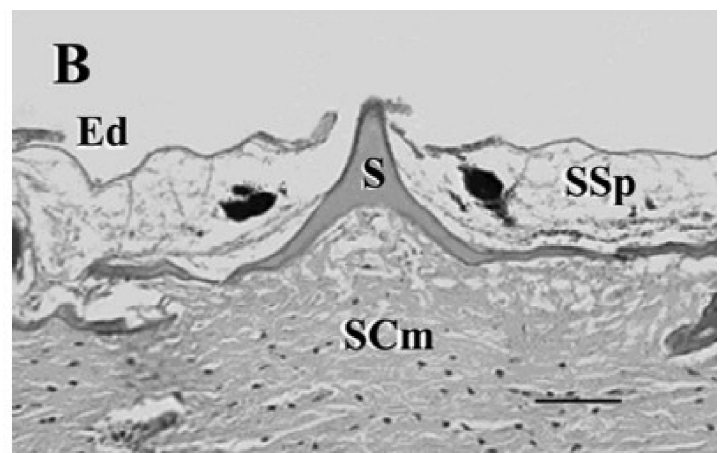
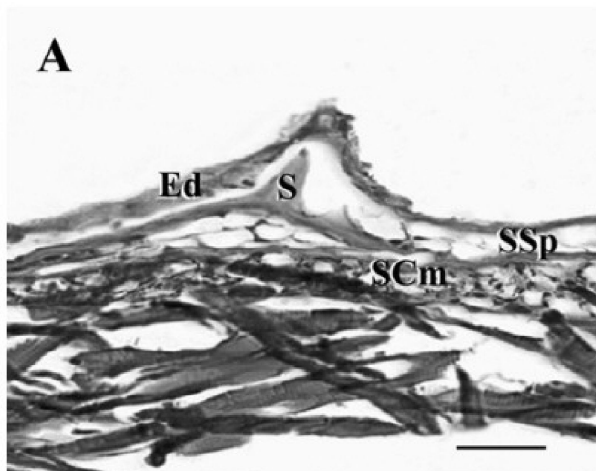
27. *Ontogeny of Squamation in Swordfish, Xiphias gladius* - J. J. Govoni, M. A. West, D. Zivotofsky, A. Z. Zivotofsky, P. R. Bowser and B. B. Collette, Copeia, 2004(2), pp. 391-396.

18. Scales of *Xiphias* are highly modified .... Scales are not rooted in scale pockets within the dermis, the typical condition in fishes. Rather than having attachment at the proximal end within scale pockets, *Xiphias* scales are closely applied along their base to the dermis. Scales persist in adults but become deeper in the dermis as the stratum spongiosum increases in thickness above the scale. Scales do not recede; the thickness of the dermis above the basal attachment increases. The result is that scales remain only partially protuberant in adults. In most fishes, scales emerge through the dermis obliquely, but in *Xiphias*, the scale base does not emerge and is parallel to the plane of the dermis ....
- Scales of juveniles and adults appear in rows; both small single and multispined scales and large multispined scales are interspersed within rows. Scales grow after formation and are not replaced by an adult form. ...
- The confusion in the literature about the presence or absence of scales on adult *Xiphias* owes to the thickening of the dermis above the scale as larval and juvenile *Xiphias* grow. The result is that only the tips of the scale spines protrude in adults. Scales are often fractured and abraded when fish are caught and processed by the fishery. The cuticular layer of the integument is also covered with a thick layer of mucus, secreted by a network of mucous canals within the epidermis. This mucus lubricates the integument and renders scale spines less conspicuous. More complex adult scales do not replace scales of larval *Xiphias*. Scales may be replaced if lost, but they apparently are not deciduous .... no scales appeared on the surface of the epidermis where they might be sloughed off. Scales do not become reduced in size by resorption.

Ontogeny of Squamation in Swordfish, *Copeia*, 2004(2) p392-4

19. Spinoid scales appear early in the development of Swordfish, *Xiphias gladius*, and are first discernable in the larval stage. Scales vary in form between two principal types: small single and multispined scales and large multispined scales. Unlike the typical teleostean condition, *Xiphias* scales are attached along their base, not at their proximal end within scale pockets. Scales persist in juveniles and adults, that is, scales are not shed or resorbed. Scales become more deeply embedded within the dermis as the dermis thickens in ontogeny; consequently only the tips of spines protrude through the dermis of adults. A network of mucous canals with regularly spaced pores to the exterior develop in the dermis of adults, and the mucus produced further insulates scales from the surface of the integument. The ontogeny of the squamation of *Xiphias* differs from that of the related *Istiophoridae*.

Ontogeny of Squamation in Swordfish, *Copeia*, 2004(2) p391 - Summary



Photomicrographs of the integument and scales of *Xiphias gladius*. (A) The integument with scale (S), epidermis (Ed), and dermis with stratum spongiosum (SSp), stratum compactum (SCm) of a 22.2 mm larvae (scale bar 63  $\mu$ m). (B) The integument of a 330 cm adult (scale bar 45  $\mu$ m). From Govoni, JJ. et al. *Ontogeny of Squamation in Swordfish, Xiphias gladius*. *Copeia*, 2004(2), pp. 391–396.

- So it seems that swordfish clearly DO have anatomical scales, but they are not very apparent in the adult fish. As such, when the fish is caught, it appears to have no scales.
- But are the anatomical scales too connected to the skin of the fish to classify the swordfish as kosher?



**G] IS SWORDFISH SPECIFICALLY MENTIONED IN THE SOURCES?**

20. .... אין לו עכשיו אבל עתיד לגדל לאחר זמן, כגון הסולתנית ואנפיא - כשר. יש לו עכשיו אבל עתיד להשירה בשעה שעולה מן הים, כגון הקוליים והפולמוס **כספתיאס** אכנס ואנתיניס כשר....

תוספתא מסכת חולין (צוקרמאנדל) פרק ג הלכה כז

The Tosefta mentions a fish called 'kasaftias', which is one of the species which has scales, but the scales come off when it is removed from the water. We saw above in the Gemara in Chulin (66b) two similarly named fish with the same properties - *ketasaftiyas* and *achsaftiyas*.

- The word *Katasaftias* appears to be an Aramaicized version of a Greek word, possibly *xiphias*, which refers to the swordfish (based on the Greek *xiphos*, which refers to a sword).
- The Koren talmud includes the following note:

21.

*Ketasfatiyas* – כֶּתַסְפַּתְיָאָס: Some maintain that this is from the Greek *ξίφιας*, *xifias*, known as a swordfish. This fish does, in fact, shed its scales outside the water.

- Although all fish lose some scales when being pulled out of the water, we have seen that the swordfish does not actually LOSE its scales, but the scales are buried deep in the skin of the fish, giving it the appearance that it has lost its scales<sup>28</sup>. When the juvenile swordfish is seen in the water, it does indeed have clearly visible scales.
- If *ketasaftiyas* is indeed a reference to a billfish of some kind, the likelihood is that it refers to the swordfish, which is the most common bill fish in the Mediterranean.

22. עד. מנהג פשוט בכל ישראל לאכול דג 'בעל החרב' הנקרא בלעז פישי אישפאדה, אף על פי שאין לו קשקשת, מפני שאומרים שבשעה שעולה מן הים מחמת כעסה מתנועעת ומשלכת קשקשותיה. ואולי א' מן המינים שהוזכרו בברייתא הוא שיש לו עכשיו ועתיד להשירן כשעולה מן הים. ושמעתי ששר אחד משנה למלך שאל את מורי זקני על זה היאך היו אוכלין אותו. והשיב לו שמשירו בשעה שעולה מן הים, ויהי כמצחק. מה עשה מורי זקני? הוליכו לבית המצודה במקום שצודים הדג הזה, ולקח כמו אמה בגד שחור והניחו במכמורת שהיו צדין דג זה, וצדו אחד מהם. ואחר שצדהו הסיר הבגד השחור ומצאו מלא קשקשים והראהו למשנה. אז אמר אתם אמת וקבלתכם אמת!

כנסת הגדולה הגהות בית יוסף יורה דעה סימן פג אות עד

The leading 17th century halachic authority from Turkey, Rabbi Chaim ben Yisrael Benvenisti, writes in his *Knesset HaGedolah*, that it was widespread custom among all Jews to eat the 'fish with the sword', which he calls *fishiei espada*<sup>29</sup>. Even though it does not have any apparent scales, it was understood that when it is caught and taken out of the water, due to its anger, it shakes and throws off its scales. He gives an account of how his grandfather, R. Moshe Benvenisti, proved this to a local government official by placing a black cloth in the fishing nets after catching this fish. The cloth was covered in scales which had come off the fish.

- This ruling of the *Knesset HaGedolah* is cited as authoritative by a number of prominent later authorities, including the *Pri Megadim*<sup>30</sup>, *Darhei Teshuva*<sup>31</sup>, *Chida*, and *Kaf HaChaim*.<sup>32</sup>

23. ג. .... פשט המנהג לאכול דג בעל החרב נקרא פישי איספאד"ה מפני שאומרים שבשעת עלייתו מהים משלכת קשקשותיה. וזקנו הראה למשנה למלך הקשקשים בבגד שחור שהניח במכמורת שצדין דג זה. הרב כנה"ג סוף הסימן וברמזי תשובותיו סי' קכ"ה.

מחזיק ברכה יורה דעה סימן פג

Here the *psak* is quoted verbatim by the *Chida*.

- Whatever the *fishiei espada* was, it is clear that there was a consistent minhag to eat it, which was not questioned until the mid 20th Century. It is possible that this was the swordfish, but this point is NOT clear and became the subject of a major controversy starting in 1951.

28. In fact, no fish known today loses all its scales just from being pulled out of the water. Some fish (such as herring) have very deciduous scales which come off in large numbers in the trawl. Since the Talmud refers to this phenomenon, it is possible that there could have been a fish in those times which did manifest this, or it is possible that the description refers to something similar, such as a fish which use to have scales but now does not appear to. (This would parallel the first case of a fish which did not used to have scales, but later does develop them.)

29. Espada is a sword in Spanish.

30. Sifte Da'at 83:2.

31. Rabbi Tzvi Hirsch Shapira, early 20C Munkatz (Darhei Teshuvah 83:10-11 and especially 83:13) rules that scales are valid even if they are attached all the way around their base, even if they can only be detached with a utensil and with effort, and even if there is skin above them – as long as there is also skin beneath them. With swordfish, the entirety of the stratum compactum (the lower layer of the dermis) lies beneath the scales.

32. YD 83:9. He quotes the account of the *Knesset HaGedola* verbatim as the *psak* halacha. The *Kaf HaChaim* - R. Yaakov Sofer - was a major 20th Century sefardi posek in Iraq and then Eretz Yisrael. The minhag to eat the *fishiei espada* was upheld without opposition until around 75 years ago.

## H] THE MODERN CONTROVERSY

- There was a widespread minhag until the mid 20th Century, especially in Mediterranean lands, to eat swordfish. This was largely based on the understanding that the psak of the Knesset HaGedolah, and the mesora following it, related to swordfish.
- **1933:** The Agudat HaRabbanim in the US and Canada published a list of kosher fish, which included swordfish and sturgeon. It was attacked by the OK for including sturgeon<sup>33</sup>, but NOT for the inclusion of swordfish! Even up to the 1960s there were some Orthodox Rabbis<sup>34</sup> in the US who ruled that swordfish was kosher.
- **1951:** A young Rabbi Dr. Moshe Tendler<sup>35</sup> examined a swordfish and did not find any scales. He was convinced it is not a kosher fish and launched a campaign against its consumption. His main claims were:
  - the fish referred to by the Knesset HaGedolah was NOT the swordfish but another species, probably the sailfish<sup>36</sup>.
  - it does not have any scales (even when examined under a microscope) when mature. It is not clear that a fish can be kosher if it has scales when juvenile but loses them.
  - even if it does have scales when juvenile, these are too attached and are not halachically acceptable.
- **1961:** Rabbi Isser Yehuda Unterman<sup>37</sup> countered with a strong response and defended the kashrut of the swordfish. His main objections to Rabbi Tendler were:
  - the unbroken mesora from the Knesset HaGedolah onwards.
  - the identification of swordfish as kosher<sup>38</sup> in the 1956 edition of the Talmudic Encyclopedia, which identifies it with the kosher *Katasaftias* in Chazal.
- **1963:** The Israeli Ministry of Religion published a paper discussing the different sides of the debate, declaring that the matter required further analysis, and ruling that, in the meantime, it was prudent not to eat the fish.
- **1960s:** A fierce debate erupted in halachic journals in the 1960s - Sinai, HaMa'or, HaPardes and others. Rabbi Eliezer Waldenberg took the side of Rabbi Tendler, based largely on his research, and clearly ruled that swordfish is not kosher.

### 24. דג הנקרא בשם סווארדפיש אם מותר לאוכלו לח"א.

(א) על אודות דגי-החרב הנקרא בשפה האנגלית בשם סווארדפיש נראה לדעתי שיש לאוסרו. ואף על גב שהכנה"ג (בסימן פ"ג הגהב"י אות ע"ד) כותב דמנהג פשוט בכל ישראל לאכול דג בעל החרב נקרא בלעז פיש-אישפאדה אף על פי שאין לו קשקשת מפני שאומרים שבשעה שעולה מן הים מחמת כעסה מתנועעת ומשלכת קשקותיה. אבל מי יאמר לנו דהפיש-אישפאדה הוא מה שקוראים בשם סווארדפיש? והרי אין חולק שגם הדג הנקרא בשם סווארדפיש יש לו גם כן חרב, והמין ההוא של הסיילפיש הוא בדוק ומנוסה שיש לו קשקשים גדולים בין בקטנותו ובין בזקנותו אלא שהרבה מהם נופלים בשעה שצדים אותו מן הים. וא"כ מי הוא זה שיוכל לקבוע לנו וגם שיוכל לסכן א"ע ליכנס לבית הספק של איסור דאורייתא, ולומר בודאות שגם מין הדג הנקרא בשם סווארדפיש הוא ג"כ ממשפחת מין הדג פיש-אישפאדה אשר הבעל כנה"ג מעיר עליו שנהגו בכל ישראל לאכלו, בזמן שאין מי שיעיד עליו שיש לו או שהיה לו או שעתיד להיות לו קשקשים. והרבה דומים בדומים ישנם במיני הדגים וחלק מהם שייכים לסוג הטהורים וחלקם השני שייכים לסוג הטמאים.

שו"ת ציץ אליעזר חלק ט סימן מ

*The Tzitz Eliezer rules that swordfish is NOT kosher. Even though the Knesset HaGedolah ruled that the 'fischei espada' was kosher, we cannot be sure enough that our swordfish is the same species. To put oneself into a possible breach of a Torah mitzva in such circumstances is unwarranted and unnecessary.*

- **1965:** Rabbi Shimon Efrati, head of the National Kashrut Division of the Israel Rabbanut ruled unequivocally in 1965 that swordfish IS kosher, and that many people still eat. As the decade continued some of the articles became more caustic!<sup>39</sup>
- **1966:** The Conservative movement in the US confirmed their ruling that swordfish ARE kosher.
- **1968:** Rabbi Tendler published a famous article in The Jewish Observer ruling that swordfish is certainly not kosher. In an Epilogue<sup>40</sup>, Rabbi Tendler launches a scathing attack on the Conservative movement and describes the issue of the swordfish as a defining dispute between Orthodoxy and Conservative<sup>41</sup> Judaism ('the new mechitza'). This article was reprinted<sup>42</sup> many times and, understandably, increased the hashkafic pressure on the Orthodox community in the US to also take that position.

33. The main halachic question on sturgeon is whether the bony plates on its sides are halachically acceptable as scales, since they cannot be removed without damaging the skin.

34. Such as R. Mordechai Savitsky of Boston, who was an honorary president of the Agudat HaRabbanim in the US.

35. Rabbi Tendler, then aged 26, was already a significant talmid chacham, son-in-law of R. Moshe Feinstein, and had earned a PhD in microbiology. He has gone on to become a senior posek, Rosh Yeshiva and a Professor of Biology at Yeshiva College.

36. Nevertheless, most kashrut authorities today list the sailfish as not kosher. For a detailed analysis of the most likely candidate for the species encountered by the Knesset HaGedolah, see R. Dr Zivotofsky's 2008 article pp36-44).

37. Then Chief Rabbi of Tel Aviv and later of Israel.

38. In fact, the Encyclopedia is not unequivocal on this issue! It includes pictures of many fish which it identifies as kosher, but it does not make this statement next to the picture of the swordfish, nor does it declare it to be non-kosher. Professor Yehuda Felix, author of the original Encyclopedia entry later confirmed that he had been asked by the editor, Rabbi Shlomo Zevin, to keep it vague and not to rule on the matter, due to the controversy (see Zivotofsky footnote 60).

39. For instance, an anonymous article in Hebrew in HaMa'or 17:2 [158] which includes the passage (translated by R. Zivotofsky): "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 ... 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!"

40. For the article and epilogue see <https://betshemeshtorah.org/wp-content/uploads/2018/08/RTendler-Swordfish.pdf>

41. The halachic and hashkafic distance between the Conservative and Orthodox movements today has increased dramatically and the Orthodox world no longer feels threatened by Conservative Judaism. The situation in the 1960s was very different and lines between the movements were far more blurred. In the years 1946-57, 30 percent of the applicants to the Conservative JTS rabbinical school were graduates of the Orthodox Yeshiva College!(Marc B. Shapiro, *Saul Lieberman and the Orthodox* (University of Scranton, 2006), p. 16).

42. See Gesher 4:1 1969 - available at <https://repository.yu.edu/bitstream/handle/20.500.12202/4642/Gesher%204.1%201969.pdf?sequence=1&isAllowed=y>



25. But no place in the Talmud or the responsa literature is there any reference to such a deviant: a fish that has scales as a juvenile but not as an adult. Yet the Conservative clergy must be aware of Talmudical references to some form of swordfish since it is mentioned in the Talmudical Encyclopedia article that they cite as a basis for their "heter." If the swordfish of the Talmud had "juvenile scales," the Talmud would have surely recorded this fact.  
I discussed the above presented facts with my great teachers, Rav Moshe Feinstein shlita, and Rav Yosef Dov Soloveitchik shlita, and they concur with my decision that on the basis of the evidence presented, the swordfish (xiphias gladius) is a non-kosher fish.

Rabbi Moshe Tendler, *The Halachic Status of the Swordfish*, Jewish Observer April, 1968

- **1972:** Rav Moshe Feinstein writes a teshuva stressing the importance of buying fish with a reliable hechsher, or from a reliable person, or where the scales can be seen on the fish. He also expresses his confidence in his son-in-law, Rav Tendler, on matters of biology etc of this nature.

26. בעה"ק, ה' אב תשל"ב. מע"כ ידידי ... יעקב דרדק שליט"א ...  
הדגים טונען לפי דברי חתני הרה"ג ר' משה דוד טענדלער שליט"א, אשר הוא בקי במיני דגים, אומר שיש מיני טונען שאין להם קשקשים. וצריך לידע מי המכשיר שצריך לראות בהם הקשקשים. ובדבר דג סאלמאן נמי טוב לראות הקשקשים ולא לקנות דג קלוף אף שנקרא בשם סאלמאן. וכשיבא חתני מא"י בסוף אלול אבקשו לחקור גם בדג סאלמאן ואודיעך אז.

שו"ת אגרות משה יורה דעה חלק ה סימן לח

27. הלכות דגים בכנה"ג הביא שמנהג בכל ישראל לאכול את הדג בעל החרב הואיל ויש לו סנפיר וקשקשת. ולפני כמה שנה הכריז אחד מהרבנים באמריקה שהסארדפיש איננו דג טהור מפני שקשקותיו אינן דומות בצורתן לקשקשי שאר הדגים הטהורים. ושלא לזה נתכוון הכנסת הגדולה בהכשירו את הדג החרב. ובזמן ההוא ביקש רבינו מהרה"ג פרופסור שלמה שטרברג שיח' לבדוק בענין. והראה לרבינו את הדג ואת קשקותיו (ועדיין המעטפה עם הקשקשים ברשותו כיום). ואמר לו אז רבנו שלפי דעתו הדג הזה דג טהור הוא. דאין שום הלכות מסויימות אודות צורת הקשקשת המשמשת כסימן לטהרת דגים. (כל זה נדפס בקונטרס בכל דרכיך דעהו).

דברי הרב ד' קצ'ב

*Although, Rabbi Tendler claims that Rav Soloveitchik backed his ruling, this is not at all clear. In fact, Rav Soloveitchik asked Prof. Shlomo Sternberg to look into it. Based on the conversations with Prof. Sternberg and an examination of the scales, Rav Soloveitchik ruled that the swordfish is kosher.*

28. The commentaries on the Shulchan Aruch say dag ha'cherev [literally, "the fish of the sword"] is kosher. Why is it widely considered to be not kosher, then? Because around 60-70 years ago, they asked Rabbi [Moshe] Tendler if he could make a list of which fish are kosher and which aren't. Rabbi Tender decided to list swordfish as a treife fish because he called up an expert who told him scales on a swordfish are a different consistency – or something like that – from those of other fish. So he decided it was a treife fish. But that's absolutely not correct. The commentaries on the Shulchan Aruch say dag hacherev is kosher. Professor [Shlomo] Sternberg, a big genius in learning and math, published an essay maybe 20 years ago in which he writes that Rabbi Soloveitchik asked him to conduct research on the status of swordfish. He did. He showed Rabbi Soloveitchik the scales of a swordfish and Rav Soloveitchik said, "It's a kashere fish!" Professor Sternberg writes that he still has the envelope with the scales he showed Rav Soloveitchik in his Gemara Chullin. If the commentaries on the Shulchan Aruch say dag ha'cherev is kosher, how can Rabbi Tendler claim it isn't? Rabbi Tendler claims "dag hacherev" is a different fish. It's not true. But Rabbi Tendler did a service to the Orthodox Jewish community because at the time there were Conservative rabbis who were giving hashgachas, so he laughed them out of existence and said they don't know what they're talking because [they were giving swordfish a hechsher when] swordfish is really treif. So the Orthodox realized you can't rely on the Conservatives. L'maaseh, the Conservatives were right on this issue, but Rabbi Tendler accomplished his goal.

Jewish Press, *Is Swordfish Kosher?* Hershel Schachter, 5 Iyyar 5778 – April 19, 2018

- Today, the majority of poskim rule that swordfish is NOT kosher.
- There are communities, especially around the Mediterranean - Spain, Gibraltar, Morocco, Tunisia, Italy, Turkey<sup>43</sup> - where swordfish was eaten until recently, and perhaps still is.

43. In 1962, Israeli Chief Rabbi Nissim was invited by the Chief Rabbi of Turkey, R. David Asseo, to a dinner in his honor in Turkey where swordfish was served as a delicacy! Rabbi Nissim refused to eat it, but Rabbi Asseo and his company did eat it on the basis of their long-standing mesorah.