

Fish with Legs: Insights into Halacha

Rabbi Yehuda Spitz

In Parshas Noach we read about how Hashem brought the Mabul (Great Flood / Deluge) and destroyed all living creatures, save for those inside Teivas Noach (Noach's Ark).[1] Additionally, we find that the fish in the oceans were spared as well.[2] It would be fascinating to find out on which side of the Ark a "fish with legs" would have been. Would it have been considered a fish, and therefore spared, or an animal and two might have been sheltered inside while the rest of the species were wiped out?

A Fishy Tale?

Far from being a theoretical question, this issue was actually brought up almost 400 years ago, when a certain Rabbi Aharon Rofei (perhaps Rabbi Dr.?) [3] placed such a fish, known as a *Stincus Marinus* in front of the then Av Beis Din of Vienna, the famed Rabbi Gershon Shaul Yom Tov Lipman Heller, author of such essential works as the *Tosafos Yom Tov*, *Toras HaAsham* and *Maadanei Yom Tov*, and asked for his opinion as to the kashrus status of such a "fish", unknowingly sparking a halachic controversy.

What is a (Kosher) Fish?

This was no simple sheilah. It is well known that a kosher fish must have both fins and scales.[4] This so-called "fish" presented actually had scales, but legs instead of fins. Yet, technically speaking would that astonishing characteristic alone prove it as non-kosher?

Chazal set down a general rule that "Whatever has scales has fins as well", [5] and should still be presumably kosher. This means that if one would find a piece of fish that has scales noticeably present, one may assume that since it has scales, it must therefore have fins as well, and is consequently considered kosher. This ruling is codified as halacha by the Rambam, as well as the Tur and Shulchan Aruch.[6]

As for our *Stincus Marinus*, which had scales but legs instead of fins, the *Tosafos Yom Tov* [7] averred that this "fish" cannot be considered kosher, as the above mentioned ruling was referring exclusively to actual fish and not sea creatures. Since the *Stincus Marinus* has legs instead of fins, it could not be considered a true fish, and must therefore not be kosher.

Many authorities, including the Mahar"i Chagiz, the *Knesses HaGedolah*, Rav Yaakov Emden, the *Malbim*, and the *Aruch Hashulchan*, agreed to this ruling and considered the *Stincus Marinus* an aquatic creature and not a true fish and thus decidedly non-kosher.[8] This is similar to the words of the Rambam,[9] that "anything that doesn't look like a fish, such as the sea lion, the dolphin, the frog, and such - is not a fish, kosher or otherwise."

However, the *Pri Chodosh* [10] rejected the opinion of the *Tosafos Yom Tov*, maintaining that Chazal's rule that "whatever has scales also has fins, and is presumed kosher", equally applies to all sea creatures, not just fish, and actually ruled that the *Stincus Marinus* is indeed kosher, irregardless of whether or not it is considered a true fish.

The *Bechor Shor* [11] wrote that in his assessment, this whole disagreement was seemingly borne of a colossal misunderstanding, and all opinions would agree to an alternate interpretation. He opined that although it would be considered a sea creature, the *Stincus Marinus* should still indeed be considered kosher for a different reason. As although this "fish" has no true fins, still, its feet are the equivalent of fins, and accordingly, it still fits the halachic definition of a fish! [12]

Rule of Thumb (or Fin)

The renowned Rav Yonason Eibeshutz, although agreeing in theory with the Pri Chodosh that Chazal's rule meant to include all aquatic life and not just fish, conjectured that possibly said rule was not meant to be absolute; rather it was meant as a generality. Generally, if a fish has scales one may assume it will also have fins; this does not exclude the possibility of ever finding one fish which does not. According to this understanding, apparently the Stincus Marinus would be considered an exclusion to the rule and therefore non-kosher. This is also the understanding of several other authorities including the Yeshuos Yaakov, the Shoel U'Meishiv, and HaKsav V'HaKabbalah.[13]

In strong contrast to this understanding of Chazal's statement, the Taz emphatically declared, "No fish in the world has scales but no fins", meaning that Chazal's rule was meant to be unconditional, and consequently, by definition there cannot be an exception. Most authorities agree to this understanding, with many of them, including the Pri Chodosh, the Chida, and the Kaf Hachaim[14] ruling accordingly that the Stincus Marinus is indeed kosher based on this, since it did actually have scales[15].

Scientifically Speaking

A scientific study published in 1840 by Rabbi Avraham Zutra of Muenster identified the Stincus Marinus as a relative of the scorpion, or a type of poisonous toad.[16] Similarly, the Chasam Sofer[17] wrote that he accepted the findings of "expert scientists" who confirmed that the Stincus Marinus is not actually a sea creature at all. Rather, it lives on the shore and occasionally jumps into the water, as does the frog. According to both of these Gedolim, our "fish" was most definitely not a fish, rather a sheretz (non-kosher crawling land animal)! This would make the entire preceding halachic discussion irrelevant, as the Stincus Marinus would not fall under the category of Chazal's statement, and would thereby be 100% non-kosher. The Kozeglover Gaon[18] actually uses this "fish" as a testament to the Divinity of the Torah, as the only known exception to Chazal's rule turned out to be not a fish at all, but rather a type of lizard!

On the other hand, not only does the Darchei Teshuva[19] not accept Rabbi Avraham Zutra's scientific study, but even writes a scathing response that he does not understand how one can place these findings from non-Halachic sources between teshuvos HaGaonim without a clear proof from Chazal or Poskim "sheraq mipeehem unu chayim". Accordingly, this opinion of the Darchei Teshuva would also unsubstantiate the conclusion of the Chasam Sofer, for although the Chasam Sofer agreed to the Tosafos Yom Tov's conclusion that the Stincus Marinus is not kosher, his claim that it is not a true sea creature is based on "scientific experts". Therefore, this scientific analysis that the Stincus Marinus be considered a lizard or scorpion, may not actually be acknowledged by all.

Practical Impracticality

The Gemara questions Chazal's rule that scales suffice to render a fish kosher, "Why then does the Torah mention fins altogether? The Gemara answers in an extremely rare fashion: "l'hagdil Torah ulha'adirah", 'to magnify and enhance the Torah[20]. The Magen Avraham in his peirush on the Yalkut Shimoni[21] takes this a step further. He writes that l'hagdil Torah ulha'adirah was not limited to the topic of fins and scales. Rather, it was also referring to our Stincus Marinus. Similar to Rashi's explanation to the famous last Mishna in Makkos[22], that Hashem wishes to grant Klal Yisrael extra reward and He therefore added effortless Torah and Mitzvos, such as refraining from eating repulsive creatures that one wouldn't want to eat anyway. So too, by our "fish", since it is poisonous, one wouldn't have any sort of desire to eat it, thus possibly taking it out of the realm of practical halacha. Nevertheless, this whole issue of finding out its kashrus status was meant for us to delve into exclusively to get rewarded in the Next World, an infinitely more appealing approach.

So was the strange looking sea creature swimming in the ocean outside the Teivah or was it found within? It seems like we probably will never fully know the answer, although it certainly is fascinating that it seemingly would depend on how the Stincus Marinus is classified halachically!

Postscript:

Scientifically, it appears that the classification Stincus Marinus is a misnomer, as it is categorized as a lizard from the skink family, known as a Scincus Scincus, or a Sandfish Lizard. See <http://runeberg.org/nfcd/0703.html>. Although non-aquatic, it has been proven in the prestigious Science journal (vol. 325, July 17, 2009, in a published study by Daniel I. Goldman, "Undulatory Swimming in Sand: Subsurface Locomotion of the Sandfish Lizard") via high speed X-ray imaging that below the surface, it no longer uses limbs for propulsion but "generates thrust to overcome drag by propagating an undulatory traveling wave down the body". In other words, although deemed a lizard, it does possess fish-like characteristics, as it "swims" through the sand beneath the surface.[23]

Scientists are even trying to understand and mimic its unique abilities to help search-and-rescue missions.[24] So it is quite understandable how many of the above-mentioned Gedolim felt that the Stincus Marinus was a fish or aquatic creature, even according to those who side with the Chasam Sofer's conclusion that it is truly a sheretz ha'aretz.

This article was written L'Iyuy Nishmas R' Chaim Baruch Yehuda ben Dovid Tzvi, L'Refuah Sheleimah for R' Shlomo Yoel ben Chaya Leah, and l'Zechus for Shira Yaffa bas Rochel Miriam v'chol yotzei chaltzeha for a yeshua sheleimah teikif u'miyad!

For any questions, comments or for the full Mareh Mekomos / sources, please email the author: yspitz@ohr.edu.

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[1] Parshas Noach (Ch. 7, verses 21 - 23).

[2] Midrash Rabbah (Bereishis 32, 9), cited by Rashi (Noach Ch. 7: 22, s.v. asher).

[3] The Lev Aryeh (Chullin 66b, end s.v. b'gm') seems to understand that the questioner was indeed a doctor and the moniker given was not actually referring to his name.

[4] Parshas Shmini (Vayikra Ch.11, verses 9 - 13) and Parshas Re'eh (Devarim Ch. 14, verses 9 - 10).

[5] Mishna Nida (51b) and Gemara (Chullin 66b).

[6] Rambam (Hilchos Maachalos Asuros Ch. 1, 24); Tur and Shulchan Aruch (Yoreh Deah 83, 3).

[7] Maadanei Yom Tov (Chullin 66b, 5).

[8] Mahar"i Chagiz (Shu"t Halachos Ketanos vol. 1, 255, and vol. 2, 5; cited by the Chida in Shiyurei Bracha, Yoreh Deah 83, 1), Knesses HaGedolah (Yoreh Deah 83, Haghos on Tur 6), Rav Yaakov Emden (Siddur Yaavetz, Migdal Oz, Dinei Dagim 8 & 9; quoted in the Darchei Teshuva 83, 27 - 28), Malbim (Parshas Shemini, 80; he writes that a sea creature with four legs is not considered a fish, rather a non-kosher "Chai HaYam"), and Aruch Hashulchan (Yoreh Deah 83, 10).

[9] Rambam (Hilchos Maachalos Assuros Ch. 1, 24).

[10] Pri Chodosh (Yoreh Deah 83, 4).

[11] Bechor Shor (in his commentary to Chulin 66b, cited by the Darchei Teshuva *ibid.*). He actually wrote that the whole disagreement was a colossal misunderstanding, and all opinions would agree to his understanding.

[12] There seemingly is precedent for such a theory based on the words of several Rishonim describing the Pelishti Avodah Zarah 'Dagon' (Shmuel I Ch. 5: 2 - 7), which many, including Rashi (*ad loc.* 2 s.v. eitzel), the Raavad (in his commentary to Avodah Zarah 41a), and R' Menachem Ibn Saruk (Machaberes Menachem; London, 1854 edition, pgs. 61 - 62) describe as a 'fish-god', meaning an idol in the shape of a fish. Yet, the Navi explicitly writes that the idol had "hands" (that were cut off). This implies that a fish's flippers or fins can indeed justifiably be called a "yad" in the Torah. See also Radak (Shmuel I Ch. 5:4) and Teshuvos Donash al Machberes Menachem (London, 1855 edition, pg. 58), as well as Hachraos Rabbeinu Tam (*ad loc.*) for alternate interpretations, including that of a hybrid half-man half-fish idol, in which case, as the top half was in human form, would have had human hands. According to this interpretation, this passage would not yield any proof to the Bechor Shor's assessment. Thanks are due to Rabbi Reuven Chaim Klein for pointing out this interesting tangent.

[13] Kreisi U'Pleisi (Yoreh Deah 83, 3), Yeshuos Yaakov (*ad loc.* 2), Shu"t Shoel U'Meishiv (Mahadura Kamma, vol. 3, 54), and HaKsav V'HaKabbalah (in his commentary to Vayikra Ch. 11, 9).

[14] Taz (Yoreh Deah 83, 3), Pri Chodosh (*ibid.*), Chida (Machazik Bracha, Yoreh Deah 83, 7 and Shiyurei Bracha, Yoreh Deah 83, 1; also mentioned in his Shu"t Chaim Sha'al vol. 2, 19), and Kaf Hachaim (Yoreh Deah 83, 6 and 15).

[15] The Pri Megadim (Yoreh Deah 83, Mishbetzos Zahav 2; also writing that this seems to be the Prisha's shittah (*ad loc.* 7) as well; see however Mishmeres Shalom, Be"ד3, who attempts to answer the Pri Megadim) and the Maharam Shick (in his commentary on the Mitzvos, Mitzva 157, cited by the Darchei Teshuva *ibid.*) maintain this way as well; however they do not definitively rule on the kashrus status of this "fish". The Aruch Hashulchan (Yoreh Deah 83, 5) as well as his son, the Torah Temima (Shemini Ch. 11: 9, 32), also held this way, that this rule is Halacha from Sinai, yet, the Aruch Hashulchan himself, still ruled that this specific "fish" non-kosher, as he considered the Stincus Marinus a sea creature, not a fish, like the Rambam. The Eretz Tzvi (see footnote 16) as well, although maintaining that it is not kosher for a different reason, writes emphatically that this rule of Chazal is absolute, and is even testimony to the Divinity of the Torah.

[16] Shomer Tzion HaNe'eman (vol. 91, pg 182), cited by the Darchei Teshuva (*ibid.*) without quoting the author, as well as cited in Kolmus (Pesach 5769 - Fish Story by R' Eliezer Eisikovits) without citing the source.

[17] Chasam Sofer, (commentary to Chulin daf 66b s.v. shuv).

[18] Eretz Tzvi on Moadim (Yalkut HaEmuna, Maamar Sheini, Inyan Sheini ppg. 251 - 252).

[19] Darchei Teshuva (Yoreh Deah 83, 28).

[20] Nida (51b) and Chullin (66b). For an interesting explanation of this dictum, see Lev Aryeh (Chullin 66b s.v. v'ulam).

[21] Zayis Raanan (Parshas Shemini, commentary on the Yalkut Shimoni; explanation on pg 146a). The Lev Aryeh (Chullin 66b, end s.v. b'gm') explains that it seems from the Magen Avraham's elucidation that he seems to agree with the opinion of Rav Yonason Eibenschutz that Chazal's fish rule was not meant to be absolute. For, if it was, why would the Gemara conclude that extra reward is given for staying away from a poisonous Stincus Marinus that would technically have been kosher? L'hagdil Torah ulha'adirah would only have been applicable if this "fish" turned out to be the exception to the rule, and even though it had scales was still not kosher. Accordingly, although we would avoid this "fish" because it was poisonous, we would nonetheless still attain sechar for doing so, as it would not have been deemed kosher.

[22] Gemara Makkos (23b) and Rashi (ad loc. s.v. l'zakos).

[23] A clip showcasing the sandfish lizard's amazing ability is available here: <https://www.youtube.com/watch?v=P4bxRj-BjFg>, as well as a picture of several of them preserved in a German Museum: <http://i0.wp.com/themuseumtimes.com/wp-content/uploads/2014/12/IMAG1193.jpg>.

Thanks are due to R' David Hojda for providing these fascinating links.

[24] See here <https://www.youtube.com/watch?v=Xzt1iJbwNXE&spfreload=10>.

Disclaimer: This is not a comprehensive guide, rather a brief summary to raise awareness of the issues. In any real case one should ask a competent Halachic authority.

L'iluy Nishmas the Rosh HaYeshiva - Rav Chonoh Menachem Mendel ben R' Yechezkel Shraga, Rav Yaakov Yeshaya ben R' Boruch Yehuda.