

## Lobster Divers in Nicaragua's Atlantic Coast

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### Economic Aspects

The seafood industry in Nicaragua is the second product in exports, first is coffee. Records show, that seafood volumes reached 31.6 million Lbs., in 2000. This represents, a 13% increase since 1999. Roughly 23.1 million Lbs. of seafood were exported, mainly to the US. Exporters made US\$ 123.5 million.<sup>1</sup> In the year 2000, Nicaragua exported over 4 million Lbs. of lobster tails. Most of it was captured in its Atlantic Coast. Of all the lobsters caught in the Atlantic Coast, over 2 million Lbs. were caught by artisan fleets. The remaining 1.9 million Lbs. were caught industrially, the following way: 911,000 Lbs., by an average of 21 diver ships, and, 1,059,000 Lbs., by 50 ships with traps. The lobster industry generated approximately US\$ 21 million, for its exporters, in 2000. Despite the lobster divers' economic contribution; they do not receive any economic compensation when they suffer injuries, nor do their families, when a diver dies on the job<sup>2</sup>. Despite the fact that Exporters, pay US\$ 2.50 for a pound of lobster tails to the diver, which they later sell abroad for US\$ 12.50.

Other records show, the industry's effort and catch of lobster in 2000. The industry's 1.9 million Lbs. were caught combining: 13,763 fishing days (FD), of the 50 ships that use traps and, 4,407 FD, of the 21 ships that use divers. This shows that, the average catch for a ship that uses traps is 77 Lbs./FD and 21,000 Lbs. per ship. The diver ships have an average of 207 Lbs./FD and 43,000 Lbs. per ship. The use of divers is three times more effective than the use of traps.

<b>Potential</b>									
Caribbean Sea					Pacific Ocean				
Lb. X 1000 tails				%	Lb. X 1000 tails				%
Biomass	MSY	Year	Catch		Biomass	MSY	Year	Catch	
18,920	3,300	1998	2,386	72	2,860	660	1998	20	3
		1999	3,289	100			1999	47	7
		2000	4,052	122			2000	224	24

<b>Fishing Industry, Recent History</b>								
Caribbean Sea					Pacific Ocean			
Year	Tail Catch (Lb. X1000)				# Industrial Vessel	# Industrial Catch/ Vessel	Year	Tails (Lb. X
	Total	Artisan	AF*	Industrial				

<sup>1</sup> Fishing and Aquiculture Yearbook (*Anuario Pesquero y Acuicultura*), 2000. National Fishing and Aquiculture Administration (AdPESCA) and Center for Fishing and Aquiculture Investigations (CIPA), of the Ministry for Support of Industry and Commerce (MIFIC). (From now on, Fishing Yearbook).

<sup>2</sup> Although the National Institute for Social Security (INSS) has the legal authority to sign workers, even without the consent of the employer, this normative is not applied. Article 113 section 'c' and article 114 of the Labor Code state, that when an employer does not sign or pay for employees affiliation; the employer is obligated to pay economic benefits and compensations for professional risks, injuries and death. In the practice, most companies do not comply with these obligations. Nor do government agencies make sure that the law is enforced.

				Divers	Traps	Divers	Traps	Divers	Traps		1000) total artisan
1989	1,022	379	25		618		24		26	1989	80
1990	664	169	20		475		27		18	1990	52
1991	911	394	42	109	366	4	25	27	15	1991	44
1992	1,704	716		199	789	10	46	20	17	1992	7
1993	1,570	680		148	742	6	46	25	16	1993	3
1994	2,014	839		318	857	7	46	45	19	1994	12
1995	3,032	1,359		490	1,183	9	45	54	26	1995	55
1996	3,195	1,719	21	472	983	14	43	34	23	1996	74
1997	2,942	1,388	8	715	831	18	42	40	20	1997	114
1998	2,386	958	5	662	761	18	42	37	18	1998	20
1999	3,289	1,527	17	815	930	17	42	49	22	1999	47
2000	4,032	2,053		911	1,059	21	50	43	21	2000	2224

\*Accompanying Fauna. \*\*Maximum Sustainable Yield. Fishing and Aquiculture Yearbook, 2000 National Fishing and Aquiculture Administration (AdPESCA).

Official statistics show that lobster diving has increased drastically. In 1990, 664,000 Lbs. of lobster tails were caught and diver ships were no reported. In 2000, six times more lobster was caught than in 1990.<sup>3</sup> In 20001 the Ministry of Support for Industry and Commerce (MIFIC), has 41 diver ships registered. The ships deposit the catch in storage. The lobster storages belong to domestic and foreign companies in Puerto Cabezas, Bluefields, Corn Island and in the Pearl and Miskitos Cays.<sup>4</sup>

There are no official figures on the undersized lobster captured. Recent calculations indicate that the illegal lobster catch can represent 10% of the total lobster industry. It also represents 41% of the artisans' catch. The problem with undersized lobster is not only fiscal, because of the lack of tax payment over it, more importantly; it represents the endangerment of the species. This especially, when it is caught before reproduction.

If lobster becomes scarce, it will have a direct impact on divers. They will have to submerge for longer periods of time, and at greater depths. Between 1988 and 1998, from 30ft, that they should dive, they now dive to 120ft. They used 5 oxygen tanks a day; now they use 15.5 tanks a day.

### Lobster Divers

The traditional Miskito activity of diving by lung has changed since 1990. It has become industrial labor that uses oxygen tanks and goes to great depths, mainly to catch lobster (*Panlirus argus*). The transition from traditional artisan work, to industrial work has been abrupt and disorganized, for these divers. The development of lobster diving, has been far from the labor, health and hygienic normative, established by national and international law.

Lobster divers in Nicaragua; live and work in the Autonomous Regions in Nicaragua's Atlantic Coast. It is estimated that 98% of them are members of the indigenous Miskito people. It is also estimated, that there are from 2,500 to 3,000<sup>5</sup>

<sup>3</sup> Fishing Yearbook.

<sup>4</sup> Inventory of Commercial Fishing, May 7<sup>th</sup>, 2001.

<sup>5</sup> Nietschmann, Bernard, Conservation and Self-Determination of the Miskito Coast Protected Area, Nicaragua. Mesoamerica, June 29<sup>th</sup> 1995. Pg 21.

working divers. There are not official numbers. There are many boat drivers (cayuqueros<sup>6</sup>) under the age of 18; they work alongside the divers. Due to the conditions of lobster diving in Nicaragua's Atlantic Coast, we can note that the underage cayuquero's work is one of the *worst forms of child labor*. In conformity with definitions in the ILO's covenant num. 182 (*Of the worst forms of child labor*, 1999).<sup>7</sup>

The impact of large-scale commercial diving has been negative for Miskito people. It has increased occupational risks such as: embolisms, paraplegia or hemiplegia, produced by decompression syndrome or 'the bends'. Frequent accidents among divers; have left many of them, physically challenged, missing or dead. The lack of awareness, training, proper equipment and economic alternatives combined with the indigenous' cultural characteristics, can be considered immediate triggers for this situation.

### **The Silent Epidemic**

The director of Corn Island's hospital calculates that in 2001, there have been 6 decompression accidents in the area and 1 death. There were 20 accidents in 1999, and 12, with 3 deaths, in 2000. This makes a total of 42 accidents in these 3 years. The hospital director admits, that not all the injured divers seek help in the hospital. Many of them do not trust the Hospital; they prefer to be helped by traditional medicine. It is difficult to determine how many accidents and deaths have actually taken place.<sup>8</sup>

The Bluefields Hospital reports 19 cases in the last 5 years and only 1 death. However, physicians recognize that in many cases, decompression syndrome has not been correctly diagnosed. This indicates that statistics under calculate, the actual incidence of decompression syndrome in the area.<sup>9</sup> The physician from the Ministry of Health (MINSAs) post, in the Miskito community of Sandy Bay Sirpi, reports 15 cases of divers with type 2, decompression syndrome.

In an interview, Dr. Humberto Castro Olayo, chamber operator in Puerto Cabezas' hospital<sup>10</sup>, said he has treated 520 divers, between 1998 and June 2001. He

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<sup>6</sup> Cayuquero, is the diver's assistant, frequently a child, ranging from the ages of 12 to 18. The cayuquero stays in the canoe, while the diver works under water. He also selects the diver's scuba gear, follows the diver on the canoe, and he watches what the diver catches. Both, the diver and the cayuquero, row to a larger vessel, that awaits at distances of 300mts or more, this, for labor periods of 10 to 15 days.

<sup>7</sup> C182 *Covenant on the worst forms of child labor*, 1999. ILO. Ratified by Nicaragua on November 6<sup>th</sup>, 2000.

<sup>8</sup> Interview with Dr. Eddy Davila, Hospital Director in Corn Island. Corn Island, RAAS. September 2<sup>nd</sup>, 2001.

<sup>9</sup> Weil Donald. Decompression syndrome, Physiological Mechanism, Signs and Symptoms, Classification and Treatment, Internal and External Factors that Affect Divers, Divers' Situation in Nicaragua's Atlantic Coast, Conclusions and Recommendations. Project "RLA/98/01M/UNF- Strengthening the Legal Defense Capacity of the Indigenous Peoples of Central America. ILO Bluefields, RAAS, November 2001.

<sup>10</sup> In the present there is a working hyperbaric chamber, donated by Sub-Ocean Safety International (S.O.S.). Physicians in Puerto Cabezas' hospital, treat injured divers. When diving injuries take place in other communities, patients rarely get the necessary treatment.

admits he is not the only physician that treats divers in that hospital, for which he concludes that the amount of diving accidents is numerous.<sup>11</sup>

The Director of Puerto Cabezas' hospital, estimates that they treat between 150 and 200 divers with decompression syndrome a year. 8 deaths have been reported in the first half of 2001. Not all the deaths are reported in hospital statistics, because many injured divers never seek treatment in hospitals.<sup>12</sup> The physicians statements, coincide with a study on the life conditions of injured lobster divers, it states:

“In Nicaragua, there are no official statistics on diving accidents. In the central offices of MINSA, the death toll from diving accidents does not appear like an alarming epidemic, as it has in reality become in the region”.<sup>13</sup>

The negative impact on the health and on the lives of lobster divers in Nicaragua's Atlantic Coast, due to decompression syndrome; is disproportionate when compared with any other labor activity<sup>14</sup>. Decompression syndrome is irreversible and degenerative. The physical and social consequences of this activity can only be compared to the situation of indigenous miners in other Latin American countries.

### **The Ministry of Labor**

In Nicaragua, constitutional legislation on the protection of health and labor conditions, and the social protection of divers, is abundant.<sup>15</sup> There are also laws meant to defend environmental sustainability<sup>16</sup>, and regulate the commercialization of lobster.<sup>17</sup> However, state institutions are passive in enforcing such laws. Most of the time they are negligent.

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<sup>11</sup> Interview with Dr. Humberto Cecilio Castro Olayo, Bilwi, Puerto Cabezas, RAAN, October 10<sup>th</sup>, 2001.

<sup>12</sup> Interview with Dr. Eduardo Torres, Bilwi, Puerto Cabezas, RAAN, 10 de October 10<sup>th</sup>, 2001.

<sup>13</sup> García, M. Malespin, J. “Present Life Conditions of the Injured by Diving in Puerto Cabezas” (Situación Actual de las Condiciones de Vida de los Discapacitados por Buceo en Puerto Cabezas). RAAN”, thesis for a master's degree in public health. University of the Autonomous Regions of Nicaragua's Caribbean Coast (URACCAN). Center for Investigations and Studies of Health (CIES). School of Public Health of Nicaragua. Puerto Cabezas. May 2001. Pag.6.

<sup>14</sup> Although Law 202, Law of Prevention Rehabilitation and Opportunity Creation for Disabled People, created in 1998 a National Council presided by MINSA, and is supposed to create policy that improves the quality life, and guarantees social integration of people with disabilities. In the practice, this council has no impact on lobster divers' lives.

<sup>15</sup> Political Constitution of Nicaragua Art. 55-62, 82-88; Law 185, of October 1996, The Labor Code of Nicaragua; and the Decree No.974, of March 1982, Organic Law of the Social, Security of Nicaragua.

<sup>16</sup> According to Law 290, of June 1998, the Ministry of Natural Resources and the Environment (MARENA) is the supervisory body of environmental policy and protector of Nicaragua's biodiversity. And In conformity to Article 71 of the General Law of Environment and Natural Resources, Law 217, MARENA is the government entity in charged of preserving the biological diversity of aquatic resources.

<sup>17</sup> AdPESCA, as a part of MIFIC, is in charge of regulating and controlling the seafood industry, according to criteria of size and quantity. AdPESCA is also in charged of inspecting seafood packaging plants.

The Ministry of Labor (MITRAB) is aware of the problems that concern Miskito divers,<sup>18</sup> but instead of protecting the worker, it protects companies shortsighted interest.<sup>19</sup> For such reasons the Procurator for Human Rights in Nicaragua, found the

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<sup>18</sup> “*En vez de oxígeno les echan aire de inflamar llantas Genocidio con Buzos* (Instead of Oxygen They Give Them Air for Inflating Tires, Genocide with Divers).” 600 men in immediate danger of death in Puerto Cabezas. They are being exterminated says Minister. Employers unfazed by criticism of MITRAB. *El Nuevo Diario*, December 7<sup>th</sup>, 1997.

“*Naufragio en el Atlántico. Hundimiento se dio Frente a la Costa de Puerto Cabezas* (Shipwreck in the Atlantic. It Sank in front of Puerto Cabeza’s Coast)” *El Nuevo Diario*. January 5<sup>th</sup>, 1999.

“*Masivo Naufragio de 70 Pescadores. Langostero Había salido de Puerto Cabezas. Sobrevivientes Esparcidos en varios Cayos* (Massive Shipwreck of 70 fishermen. Lobster Vessel Had Left Puerto Cabezas. Survivors Scattered in Several Cays.)” *El Nuevo Diario*. July 21<sup>st</sup>, 1999.

“*MITRAB amenaza con cerrar pesqueras. Viceministro del Trabajo anuncia que las empresas que no cumplan con normas de higiene y seguridad serán cerradas* (MITRAB Threatens to Close Seafood Packers. Vice-Minister of Labor Announces that Companies that Do Not Comply with Hygiene and Security Standards Will Be Closed)”. *La Prensa*. March 8<sup>th</sup>, 2001.

“*Pescadores de Langostas Exponen sus Vidas Afirman que más del 50% de los buzos ha tenido accidentes por descompresión y el 10% sufre daños irreparables.* (Lobstermen Risk Their Lives. Statements Say that More than 50% of Divers Have Accidents by Decompression and 10% Suffer Irreparable Damage.)”. *La Prensa*. October 8<sup>th</sup>, 2001.

“*Langosteros Presionan por Ley de Pesca. En el año unos cinco mueren, más de 300 quedan lisiados como consecuencia de la utilización de equipos de segunda mano y la falta de un seguro social.* (Lobstermen Build Pressure for Fishing Law. In a Year Five Die, More than 300 Are Injured as Consequence of the Use of Second-Hand Equipment and the Lack of Social Security)”. *La Prensa*. October 16<sup>th</sup>, 2001.

<sup>19</sup> According to the Administrative Manager of NAFICOSA seafood company, MITRAB has only made one inspection in 10 years. This, on October 23<sup>rd</sup> of 2000, on the vessel *Mr. George*. A report by MITRAB’s Department Inspector for the North Atlantic Autonomous Region, which focused on safety and environmental evaluation, concluded that:

- 1.- There exist conditions of overcrowding for workers, due to the lack of beds for the 71-person crew.
- 2.- The scuba equipment is not adequate; it has no gauges to indicate depth and some tanks presented leaks.
- 3.- Divers receive no training, in what concerns controlled ascents. They lack gauges to indicate depth.
- 4.- Divers have no instruments to indicate to others when they are in immediate danger
- 5.- Workers have no life insurance, nor are they covered by National Institute of Social Security (INSS). When accidents occur, they are mostly, left to their luck.
- 6.- Vessels do not have an onboard physician or paramedic, in case of an accident.
- 7.- Noise levels of motor rooms are above 97 dB, high over the legal limit of 85 dB.

The report instructed the employer to:

- 1.- Have records of all the workers (vessel crew, divers, cayuqueros) under the regime INSS’ Social Security. FMC October 30<sup>th</sup> 2000 (Art. 12 CRMTM).
- 2.- Present before the Minister of Labor, medical certifications that prove divers’ physical aptitudes for marine labor. FMC January 30<sup>th</sup> 2001 (Art. 161 CT).
- 3.- Give divers proper training and equipment (wetsuits, gauges to measure depth, watches, signaling equipment), assume liability for on the job injury. FMC February 15<sup>th</sup> 2001. (Art. 172 CT).
- 4.- Give earplugs to workers that perform in machine rooms, to avoid hearing damage. FMC October 30<sup>th</sup> 2001.

Regional MITRAB delegations responsible for violating divers' human rights; mainly, the rights to life and to social security.<sup>20</sup> The Procurator's pronouncement generated no changes in MITRAB. Instead, MITRAB's Minister tried to excuse the institution's negligence, with arguments such as; that diving is an informal activity, divers consume drugs and alcohol, and although labor conditions are precarious, employers promised to obey the law in the future.<sup>21</sup>

MITRAB's attitude is due in part to frailty of the institution itself. It is also due to isolation of the divers' communities. Isolation is undoubtedly due to the divers' indigenous background. Indigenous peoples are not an economic or political power that can influence State agencies, in any way. Factors like cultural and linguistic differences, lack of awareness about the legal regime, social security and national institutions, make the enforcement of labor guarantees, all more difficult for divers.

### **Conclusions:**

Formally there are state institutions with major roles in regulating commercial diving. These institutions also have legal authority to regulate the seafood industry in Nicaragua. These institutions are the Ministry of Natural Resources and the Environment (MARENA), the National Fishing and Aquiculture Administration (AdPESCA), MITRAB, MINSA and the National Institute for Social Security (INSS). MARENA is to regulate environmental sustainability, AdPESCA regulates and controls the catch of lobster, MITRAB has the authority to inspect and guarantee safety regulations in the work place, MINSA should establish a clear policy to protect decompression syndrome patients, and INSS can obligate employers to pay for social security insurance in case of illness, injury, retirement or death of divers. Instead of complying with legal duties, State institutions in the case of Miskito divers, distort their roles completely.

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5.- Report to MITRAB mild accidents in five-days time. Also grave and fatal accidents in 24 hours.

Of the before mentioned instructions, inspectors gave the employer time to comply. A new inspection was programmed for February 16<sup>th</sup>, 2001. MITRAB's offices in the Atlantic North again inspected and said: "we verified that NAFCOSA seafood company has not improved hygiene or occupational safety. Because no instructions were obeyed; articles 100, 101, 102 and 103 of the Labor Code have been violated." NAFCOSA was fined for C\$ 10,000.00 (about US\$ 700.00) and the temporary suspension of operations, until it complies with MITRAB's instructions.

Three weeks later, sanctions imposed by MITRAB inspectors in Puerto Cabezas, were revoked by the General Inspector of Labor, in Managua (Resolution No.68-01, 8:00 AM, 3/9/2001).

<sup>20</sup> Resolution of September 1<sup>st</sup>, 2000. In it, The Procurator for Human Rights concludes that the rights to life and social security for divers, have been violated. It also orders the Minister of Labor to conduct "an investigation on the labor situation of the Atlantic Coast's indigenous people, that work in high-seas".

<sup>21</sup> Letter from the Minister of Labor, Mario Montenegro, to Benjamin Perez, Procurator for Human Rights. May 31<sup>st</sup>, 2000.