

A Whale of a Two-Level Game:
The Birth of Japan's Scientific Whaling Regime
Michael Strausz
Department of Political Science
Texas Christian University
michael.strausz@tcu.edu
<http://personal.tcu.edu/michaelstrausz>

Prepared for presentation at the Annual Meeting of the International Studies Association
April 3-6, 2013, San Francisco, CA

ABSTRACT: Why did Japan begin scientific whaling, a policy that benefits few domestically and alienates many around the world? In this essay, I argue that Japan's scientific whaling regime was formed as a result of a "two-level game" between President Reagan and Prime Minister Nakasone. Although Reagan was faced with a unified, anti-whaling Congress, he himself did not care much about the issue. Nakasone was also not particularly concerned about whaling, and he was faced with a Diet that was divided on how to deal with this issue. Ultimately, these circumstances led Japan to develop the scientific whaling regime that persists to this day.

Japan's current whaling regime¹ has been relatively stable since the beginning of scientific whaling in 1988. Every year, Japan issues itself scientific permits for the killing of anywhere from 300 to 1200 whales. In addition, Japan uses both financial incentives and diplomacy to attempt to build a coalition of countries at the International Whaling Commission that would be able to overturn the moratorium on commercial whaling that was begun in 1982 (Strand and Tuman 2012). I refer to this set of policies as Japan's scientific whaling regime.

The origin and persistence of this regime are puzzling because, as David Leheny notes, "whaling is one of the few areas in which Japanese practices seem at odds with international norms..." (2011, 364). Japan's decision to defy international whaling norms is particularly puzzling because there is no significant domestic constituency that benefits economically from this regime. A 2002 article in the *Sydney Morning Herald* estimated that the whaling industry in Japan only employs 500 people (Green 2002), and whaling advocates that I spoke with in Japan also found this figure believable. While few benefit economically from Japan's scientific whaling regime, the introduction of this regime imposed a real economic cost on the Japanese whaling industry. Although there is debate about whether "scientific whaling" actually produces useful scientific data,² as **Figure 1** demonstrates, the advent of scientific whaling has not been kind to Japan's whaling industry. During the 1986 whaling season, the final season in which Japanese companies commercially whaled in both the North Pacific and Southern Hemisphere, Japan killed a total of 2,769 whales. During the 1988 whaling season, the first season where Japan officially viewed itself as bound by the

¹ I use the word "regime" here to describe "the mid-level complex of legal and organizational features captured in terms such as 'the New Deal,' 'Australian protectionism,' 'Gaulism,' or 'Scandinavian Corporatism.' All are mid-level consistencies that transcend individual governments but are far more differentiated than 'democracy' or 'capitalism'" (Pempel 1998, 20)

² For assessments of that science, see Normile (2000) and Gales et al. (2005).

IWC moratorium on commercial whaling for the whole season, Japan took only 241 whales.³ In the years since Japan has begun its scientific whaling program, Japan has not ever taken as many as half of the whales that it killed commercially in the 1986 season. The closest that Japan has come was in the 2005 whaling season, when Japan caught 1,243 whales.

[FIGURE 1 ABOUT HERE]

The scientific whaling regime continues to impose costs on Japan in terms of bad public relations. Japanese whaling is often criticized by environmentalists and foreign leaders; the International Court of Justice is currently hearing a case brought by Australia which argues that Japanese Antarctic whaling violates its treaty obligations. Japanese whalers are the main villains on the Animal Planet program *Whale Wars*, and Japanese whaling policy has been mocked on American television programs including the popular (vulgar) animated show *South Park*. Criticism by American cartoons and reality television programs might not seem to be significant costs, except that these things undermine a goal of the Japanese government to build Japanese soft power through the notion of a “cool Japan” (Leheny 2006).

In short, the scientific whaling regime seems to benefit few domestically and alienate many around the world. In this article, I will explore the origins of this puzzling regime. Ultimately, I argue that this decision was the product of bargaining between Japanese and American administrations that were each playing a “two-level game” (Putnam 1988). That is, they were both concerned with strengthening the US/Japan alliance internationally, while improving their standing in domestic politics. Although neither Ronald Reagan, the American president, nor Nakasone Yasuhiro, the Japanese Prime Minister, was particularly interested in efforts to save the whales or Japanese whaling, each chief of state

³ In this paper I follow the practice of the IWC in identifying a whaling season by the year in which the winter began. So, for example, the 1987 whaling season would include those whales taken in winter of 1987-1988 in Antarctica and those taken in the summer of 1988 in the Pacific.

was negotiating from a domestic political context that was much more concerned about the issue. As I will demonstrate below, an examination of the specifics of these contexts will clarify the reason that Japan ended up establishing a whaling regime in the 1980s that pleased no one.

This article proceeds in five parts. First, I examine the existing literature on Japan's decision to withdraw its objection to the moratorium on commercial whaling and to begin scientific whaling. Second, I outline my theory and methodology. Third, I examine the political context under which the United States entered into the negotiations that resulted in Japan removing its objection to the moratorium on commercial whaling. Fourth, I examine the political context under which Japan entered into these negotiations. Fifth, I examine the buildup to the 1984 US/Japan negotiations which resulted in the beginning of the scientific whaling regime, and Japanese and American policy in the wake of these negotiations.

Literature Review

A number of scholars have written detailed and compelling accounts of Japanese whaling policy. I will focus on those that attempt to explain Japan's whaling policy in the 1980s, and particularly Japan's decision to withdraw its objection to the moratorium on commercial whaling and to begin scientific whaling. Ultimately, I will show that, while a number of scholars have developed a compelling explanation for one of these two policies, no one has yet developed an explanation that can account for each of these two policy decisions.

When scholars have written about Japan's decision to withdraw its objection to the moratorium on commercial whaling in 1984, they have made two arguments. First, a number of scholars have pointed to the importance of U.S. pressure in convincing Japan to change its policy. For example, Keiko Hirata (2004, 132) argues that Japan "dropped its objection to

the IWC moratorium in exchange for a quid pro quo of being allocated a fishing quota in the U.S. EEZ.” Flowers (2008, p. 103) and Peterson (1992, p. 181) make similar arguments about the importance of U.S. pressure in convincing Japan to withdraw its objection to the moratorium on commercial whaling. Second, Catalinac and Chan (2005, 135) explain Japan’s decision to withdraw its objection with reference to Japan’s desire to be seen as a “responsible member of international community.”

Both of these arguments—that U.S. pressure or a desire for international acceptance drove Japan’s decision to withdraw its objection to the moratorium—have the same difficulty. That is, neither argument can explain Japan’s decision to begin scientific whaling in 1988. Japan began its scientific whaling program in the face of economic sanctions from the United States and intense criticism from other members of the international community. Why would these forces have been effective in convincing Japan to give up commercial whaling but ineffective in convincing Japan to stop its plans for a scientific whaling program— a program with a much smaller economic benefit for Japan’s economy than commercial whaling?

Scholars have made three arguments to explain the beginning of Japan’s scientific whaling program. First, a number of scholars have noted the weakness of anti-whaling advocates in Japanese domestic politics. As Hirata notes, “Japan has virtually no legislative advocates for the anti-whaling cause and no legislative supporter of anti-whaling activism,” and the few anti-whaling NGOs in Japan have been excluded from the bureaucratic decisionmaking process (2004, 145-46). Second, many argue that Japan keeps whaling because of whaling’s importance to Japanese culture. Hirata (2004, pp. 141-44) argues that whaling is widely held to be an important cultural practice in Japan, and western criticism of whaling is likewise considered to be an example of cultural imperialism. For similar reasons, Miyaoka (2003) argues that Japanese elites do not view the international norm against whaling as legitimate, and thus do not feel bound by it, and Flowers (2008, 109) argues that

Japan remains in the IWC while continuing to practice scientific whaling because they understand these two practices together as a way to attempt to use science and international law “to preserve culture and traditions.” Third, Hirata (2004, 190) notes that Japanese bureaucrats “fear that the ban on whaling will potentially have a spillover effect on the catching of other types of sea creatures,” and thus they continue to advocate scientific whaling in order to resist the ban.

These explanations for Japan’s decision to begin its scientific whaling program have difficulty accounting for Japan’s decision to withdraw its objection to the moratorium on commercial whaling in 1985. If Japanese leader are concerned the importance of whaling as a cultural practice in Japan and about the precedent that a whaling ban sets for Japan’s ability to exploit other ocean resources in the future, and if the anti-whaling cause has only extremely weak advocates in Japanese domestic politics, than why would Japan withdraw its objection to the moratorium?

Theory and Methods

Robert Putnam (1988) has famously argued that, when in negotiations, national leaders are engaged in a “two-level game,” oriented toward both their position vis-à-vis their negotiating partner(s) and their position in domestic politics. One variable influencing the outcome of such a game is the nature of each negotiator’s “win-set”—the set of all possible agreements in a given negotiation that would be acceptable in domestic politics (Putnam 1988, 437). Scholars of Japan have used Putnam’s insight to study trade negotiations between Japan and the United States (Schoppa 1997; Krauss 1993) and the U.S. role in the formation of Japan’s security policy (Schoppa 2002).

Schoppa’s essay about the negotiations that led to the signing of the 1960 US/Japan Security Treaty suggests that there are two essential variables in determining the likely

outcome of a given negotiation between democracies: the level of agreement between the legislature and the executive, and the homogeneity of opinion within the legislature (Schoppa 2002, 96-98). Schoppa derives this theory from Putnam's (1988) and Milner's (1997) work on two-level games, and the theory has a wide variety of observable implications. For the purposes of this paper, I will build on Schoppa's argument from both his study of US/Japan trade relations (1997) and his chapter on the US/Japan security alliance (2002) that heterogeneous domestic preferences can actually make cooperation more likely. I make two arguments. First, although President Reagan was relatively unconcerned with whaling, the US Congress was homogeneously anti-whaling. Thus, Reagan was compelled by Congress to apply some pressure to Japan, but he applied as little pressure as he could. Second, because Nakasone was faced with a heterogeneous legislature, he had relatively more freedom to act in response to this pressure from the Americans. He chose to act in a way that minimized damage to Japanese fisheries interests while negotiating conflicts between bureaucratic agencies.

I use several types of evidence in building this case. First, I look at all Diet hearings that mention the word 'whaling' (*hoge*) in the years 1983 and 1984, leading up to and directly following the negotiations in 1984. This will help to establish the political context under which the Nakasone administration was operating when it entered into negotiations with the U.S. in 1984 and when it announced the beginning of scientific whaling in 1987. Although several scholars have written very interesting work on Japanese whaling, no one has yet examined these Diet hearing.⁴ In addition, I also consider Japanese and American media accounts, Japanese government documents, and interviews with key players on the Japanese side of the 1980s whaling negotiations. I focus my interviews on the Japanese side

⁴ Flowers (2008) examines Diet hearings that discussed whaling between 1986-1988. While this is helpful in understand the context under which Japan began its scientific whaling program in 1988, this is less helpful in understanding the context under which Japan entered into the negotiations in 1984 which eventually resulted in Japan withdrawing its objection to the moratorium on commercial whaling.

for a practical reason (key negotiators from the Japanese side were willing to talk to me) and because my key puzzle involves *Japan's* decisions to both end commercial whaling and begin commercial whaling.

Reagan and the American Congress on Whaling

A glance at the legislative record of the U.S. Congress provides striking evidence about the homogenous views of American legislators on Japanese whaling. Between 1973, the year after the UN Conference on the Human Environment (the “Stockholm Conference”) proposed a moratorium on commercial whaling, and 1990, two years after Japan began its program of scientific whaling, US legislators proposed 81 resolutions that explicitly dealt with whaling.⁵ Strikingly, *all* of these resolutions were anti-whaling. If there was a pro-whaling representative in the American legislature in the 1970s and 1980s, that representative did not propose any resolutions in support of his or her views.

Most of these resolutions ended up dying in committee. However, Congress passed two policy tools that were regularly used to limit the whaling of foreign states: the 1971 Pelly Amendment to the Fisheries Protection Act (herein the Pelly Amendment)⁶ and the 1979 Packwood-Magnuson Amendment to the Magnuson Fishery Conservation and Management Act (herein the Packwood-Magnuson Amendment). The Pelly Amendment allows America to unilaterally sanction another country when

the Secretary of Commerce finds that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which decrease the effectiveness of an international fishery conservation program. (cited in DeSombre 2000, 113)

⁵ I collected the data mentioned in this paragraph from the Library of Congress’s Thomas search engine of the legislative record (<http://thomas.loc.gov>). I searched for the word “whaling” and then looked at each bill that had either the word “whale” or the word “whaling” in its title. Many of these 81 bills were proposed several times, often in the same legislative session. Excluding bills which were obviously re-proposals in the same legislative session, there were at least 42 bills proposed that dealt with whales and whaling.

⁶ The Fisheries Protection Act was originally passed in 1967 (DeSombre 2000, 113)

When the Secretary of Commerce makes such a determination, the President has the option to “prohibit the bringing or importation into the United States of fish products” from that country (cited in DeSombre 2000, 113).

Unlike the Pelly Amendment, which was written to address Danish, Norwegian, and West German salmon overfishing (DeSombre 2000, 112-113), the Packwood-Magnuson Amendment was specifically targeted at whaling. The Packwood-Magnuson Amendment requires that countries certified under Pelly as violating the treaty which established the International Whaling Commission (IWC) must lose 50% of their fishing quotas in the U.S. Exclusive Economic Zone (EEZ) (Peterson 1992, 172-73).⁷

Both the Pelly and Packwood-Magnuson Amendments have been used against Japanese whaling, with some degree of success. At the 1973 IWC meeting, Japan objected to the IWC quota on minke whales. In November 1974 President Ford certified Japan under the Pelly Amendment, and shortly after that Japan withdrew its objection (DeSombre 2000, 209). Japan also objected to the 1982 moratorium on commercial whaling. While the America didn't certify Japan under the Pelly Amendment, America did apply a 9% cut to Japan's 1983 allocation in the U.S. EEZ—which represented around 102,000 metric tons of fish—in order to signal its displeasure to Japan (Caron 1989, 320).

In short, Reagan was dealing with a Congress that was unified against whaling. However, this was not an issue that mattered to Reagan very much at all. There are only two mentions of whaling in the diary that Reagan kept of his presidency, and both occurred in that presidency's waning days. On January 15, 1989, Reagan wrote “I phone Mrs. Roger Stevens in Fla. to have her remind me of something she had mentioned to me I'd said I would look into it. It had to do with Japan still killing whales” (2009, 568). A few days later he wrote

⁷ A state's Exclusive Economic Zone includes waters up to 200 miles off that state's coastline, where that state has sovereign authority to manage the use of ocean resources. This was a new doctrine in international law in the postwar period, and it is usually traced to the negotiations for the third UN Convention on the Law of the Sea (Peterson 1992, 167).

“Japan fudged in Internat. Whale Protection Agreement. If continues we can deny them fishing rights in our waters” (1989, 569).

The whaling negotiations that Japan and the US entered into in 1984 had the threat of sanctions lurking in the background. The Reagan administration had policy tools in the Pelly and Packwood-Magnuson amendments to make credible threats of significant economic consequences if Japan failed to comply with its pressure. The theory of two-level games suggests that America’s willingness to make and follow through on those threats depends on both the homogeneity of preferences in the American Congress and the anti-whaling stand of the President compared with the median congressperson (see **Table 1** for the theory’s implications regarding American anti-whaling pressure). Given that the Reagan appeared to be less anti-whaling than the median legislator, and that Congress had homogenous anti-whaling preferences, this theory predicts that the Reagan administration should have threatened and used the Pelly and Packwood-Magnuson Amendments only sparingly in their negotiations with Japan.

[TABLE 1 ABOUT HERE]

Nakasone and the Japanese Diet on Whaling

Unlike the US Congress, the Japanese Diet was relatively divided on the question of whaling. While no Diet Members (DMs) argued that Japan did not have the right to whale, there was significant disagreement suggested in Diet hearings about the pragmatism of continuing to whale in the face of American pressure. DMs from a variety of parties expressed concerns about the consequences of the US sanctioning Japan under the Pelly and Packwood-Magnuson Amendments. For example, in a discussion of the possibility of Japan losing permits to fish in the American EEZ as a Packwood-Magnuson-related penalty for continued whaling, Itō Ikuo from the Democratic Socialist Party (DSP) asked a representative

from the Ministry of Agriculture, Forestry, and Fisheries (MAFF) to “begin diplomatic efforts that will make every effort to preserve 100% of the allocations [in the US EEZ] that Japanese fishing companies were originally counting on” (HOC⁸ 1983). In other hearings Takeyama Yutaka, a DM from the LDP (which was also the party of Prime Minister Nakasone) and Shinmori Tatsuo, a DM from the Socialist Party (the major opposition party at the time) also asked questions which suggested that they were concerned about the implications of American sanctions on Japanese fisheries (HOC 1984a; HOR⁹ 1983).

In contrast with the above DMs, who expressed concern with Japanese fishing companies, Takeda Kazuo, Clean Government Party (CGP) DM, expressed the opposite concern. He asked several questions to a representative from the Ministry of Agriculture, Forestry, and Fisheries about what would happen to Japanese whalers should Japan remove its objection to the moratorium on commercial whaling (HOR 1984a). After outlining his criticisms of its policies including the moratorium on commercial whaling, Socialist DM Yasui Yoshinori said to representatives from the MAFF and the Ministry of Foreign Affairs (MoFA) “Should Japan remain a member of the IWC, or, should Japan even consider the drastic policy of quitting that organization” (HOR 1984b)? Similarly, CGP DM Karita Teiko argues that Japan is being too meek (*sunao sugiru*) in its negotiations with the US, and should advocate its pro-commercial whaling position more forcefully (HOC 1984b).

Nakasone’s relationship with the United States was complex. On the one hand, he and Ronald Reagan spoke well of one another, and the Japanese media in particular reported on the fact that they called one another by their first names. They had a friendship based on their shared commitment to the Cold War; as Nathaniel Thayer notes “both men are

⁸ All references to the Japanese Diet are taken from the online archive of the proceedings of the Japanese Diet (<http://kokkai.ndl.go.jp/>). I use the acronym “HOC” to represent “House of Councilors,” the Upper House of the Japanese Diet.

⁹ I use the acronym “HOR” to represent “House of Representatives,” the Lower House of the Japanese Diet.

statesmen with a shared view. Nakasone is able to articulate his global view, and Reagan is able to see that that view accords with and strengthens U.S. national interests” (1985, 59). However, Nakasone governed during a time of intense trade friction between Japan and the US, and as Ellis Krauss notes: “Nakasone’s domestic political popularity and clout within his party had come to rest heavily on his skill in mitigating U.S. trade retaliation” (Krauss 1993, 280).

Regarding whaling, it is not clear exactly where Nakasone stood. As will be discussed below, Nakasone eventually intervened to reduce the number of whales that Japan would take on its first scientific whaling mission. However, in 1983 and 1984, Nakasone did not once address the issue of whaling in a Diet hearing. That being said, bureaucrats in MAFF were famously pro-whaling—it was here that the idea of scientific whaling originated—while bureaucrats in the MoFA were concerned with avoiding conflict with the Americans. Although as Prime Minister Nakasone was the *de jure* head of each agency, his ability to exercise control over them was limited by what DMs thought; if DMs thought Nakasone was engaging in a power grab over the bureaucracy, Nakasone would have been at risk of facing a vote of no confidence.

In the face of a credible threat of US sanctions, the theory of two-level games suggests that Japan’s willingness to capitulate to American demands depends on both the homogeneity of preferences in the Diet and the pro-whaling stand of the Prime Minister compared with the median DM (see **Table 2** for the theory’s implications regarding Japan’s position). Because I have not been able to gather reliable data about the whaling stand of the median DM, it is not clear how Nakasone stands vis-à-vis the median DM. However, because of the heterogeneity of preferences of DMs, the theory of two-level games suggests that Nakasone was relatively free to respond to US pressure as much or as little as he wanted,

without fear of a vote of no confidence or other parliamentary consequences. Given this freedom, one factor which influenced Nakasone's eventual position was his attempt to resolve inter-agency competition between the bureaucratic agencies that he was charged with managing.

[TABLE 2 ABOUT HERE]

Building Toward the 1984 Negotiations

Between 1600 and 1868, the Tokugawa Shogunate severely limited contact between westerners and Japanese. In 1825, in response to increasingly frequent incidents of western whaler incursions into Japanese waters, the Shogunate issued an edict which declared that "whenever a foreign ship is sighted approaching at any point along our coast, all persons on hand should fire on and drive it off" (cited in Duus 1997, 25). Whalers continued to have contact with Japan throughout the 19th century, and in *Moby Dick*, Melville had his narrator declare that "if that double-bolted land, Japan, is ever to become hospitable, it is the whale-ship alone to whom the credit will be due, for she is already on the threshold" (cited in Duus 1997, 11). History seems to have proven Melville's narrator correct; when the American Navy sent "black ships" to Tokyo in order to demand that Japan open its ports to the world, one of the main concerns of the Americans was "the fate of castaway American sailors and whalers" (Duus 1997, 11).

In the immediate postwar period, the American Occupation did more than simply asking Japan to treat castaway American whalers well; the Supreme Commander of the Allied Powers (SCAP) actively encouraged large-scale Japanese whaling. In a message to the American State Department, General MacArthur justified the SCAP plan to allow Japanese whaling in the 1947-48 season with reference to "critical shortages of protein foods and extreme shortages [of] edible oils" in Japan (cited in Scheiber 2001, 141). SCAP also encouraged the use of whale meat in school lunches in Japan, and because of that policy,

“what had been a dietary item not consumed in most areas of Japan now became for a new generation a familiar staple meat product” (Scheiber 2001, 136).¹⁰

Beginning in the 1960s, most western countries gave up commercial whaling for two reasons. First, around the beginning of the 20th century products such as kerosene and margarine were discovered to be effective replacements for whale oil (Stoett 1999, 59; Tønnessen and Johnson 1982, 229). However, whale oil still had a number of uses, and thus these changes alone were not enough to account for the retreat of entire national industries.

The second reason that industries began to retreat was “the combination of overfishing, overinvestment, and declining prices for whale oil” (Peterson 1992, 162). These economic pressures were particularly acute in countries that didn’t have a domestic market for whale meat (a category which includes all major whaling states except Japan).¹¹ This is because “during the 1950-63 period a blue whale used only to produce oil earned its taker an average of \$3,675, while a blue whale used to produce both meat and oil earned an average of \$11,250” (Peterson 1992, 162, note 39). The decreasing profitability of whaling among non-consumers of whale meat led most western whaling states to stop commercial whaling. By 1965 British and Dutch whalers had quit, and after the 1967-68 season Norway stopped Antarctic whaling. The last of the US industry went out of business in 1972, but even before it went out of business it was too small to have substantial political impact (Stoett 1999, 86).

In addition to the decreasing economic importance of the whale, in the 1960s and 1970s there were two major trends in international efforts to regulate whaling. First, beginning in the 1960s, the IWC, which had previously been known as a “whaler’s club” (Mitchell 1998, 144), began to take the advice of scientists regarding the future of whale

¹⁰ The policy of promoting Japanese whaling had opponents within the U.S. government and even more vocal opponents among the allied powers – in particular, the United Kingdom, Australia, and New Zealand. For a discussion of conflicts among the Allies on the issue of Japanese whaling during the occupation, see Scheiber 2001, Chapter 1.

¹¹ The USSR didn’t have a domestic market for whale meat but Soviet fleets were able to remain solvent because of “large state subsidies” (Peterson 1992, 162).

stocks seriously. This change culminated in the IWC's 1974 adoption of the New Management Procedure (NMP), which gave scientists a major role in determining quotas based on the "maximum sustainable yield" of each whale species (Peterson 1992, 164).¹² Second, a transnational advocacy network began to call for a ten-year moratorium on commercial whaling. This network was made up of both radical environmentalists—who believed that people should not kill whales on principle—and scientists—who were concerned about the accuracy of the current models used to predict whale stocks (Mitchell 1998, 153-54; Peterson 1992, 169-170). This movement's first big success occurred when the 1972 Stockholm Conference passed a resolution calling for a ten-year moratorium on commercial whaling. This was regularly proposed at IWC meetings after 1972, and in 1982 anti-whaling states succeeded in implementing this moratorium, to go into effect in 1986.¹³

Japan initially objected to this moratorium (which states are permitted to do by the treaty which established the IWC), and thus continued to whale using the quotas that had existed before the moratorium. Based on its objection to the quota, the Reagan administration used the Pelly and Packwood-Magnuson Amendments to reduce Japan's permits for fishing in the American EEZ by more than 100,000 tons. This move pleased American environmentalists but upset American fisheries, because many of those EEZ allocations were for joint projects with American fishing companies (Shabecoff 1984b).

Japan and the US met to discuss this and US allocations to Japanese fishing companies in the US EEZ in November 1983 (Asahi Shinbun 1983), but did not reach any

¹² Previous to the NMP, quotas were frequently set for arbitrary reasons not based on science. In 1944, Western powers held a conference where they set the Antarctic quota for the 1945-46 season at 16,000 Blue Whale Units because, in the words of the Norwegian delegate to the conference the figure "seemed to be rather more reassuring" than other possible numbers (Tønnessen and Johnson 1982, 491). The Antarctic quota remained at or around 16,000 for almost 20 years, until the 1962-63 season (see Tønnessen and Johnson 1983, 750 for detailed quota data).

¹³ This moratorium is still in effect today. The IWC's Scientific Committee finished its review of whale stocks and in 1993 they proposed a new Revised Management Procedure (RMP) which would allow for limited commercial whaling of non-endangered species. This was initially rejected by the IWC, and in 1994 the IWC "adopted" the RMP without "implementing" it – a gesture with no policy relevance. After the 1993 rejection of the RMP the chair of the Scientific Committee resigned in frustration (Aron et al. 2002, 180).

agreement. The countries met again in November 1984. Unlike the 1983 meeting, which only lasted for two days, the 1984 meeting lasted for 13 days. Some Japanese whaling boats delayed their excursion while the talks were continuing, but as the talks dragged on Japanese whalers hit the waters (Asahi Shinbun 1984b). Also during these negotiations, American environmental groups began a lawsuit that would have compelled the Reagan administration to sanction Japan under the Packwood-Magnuson Amendment (Shabecoff 1984a).¹⁴ As a result of these talks, Japan agreed to stop taking sperm whales by 1988 and to remove its objection to the IWC moratorium on commercial whaling by April 1, 1985 (New York Times 1984).

Immediately after these talks, Japan's Fisheries Agency (a division of MAFF) denied that Japan had promised to withdraw its objection to the moratorium arguing that Japan had only agreed to give up coastal sperm whaling, not all forms of commercial whaling (Yomiuri Shinbun 1984).¹⁵ On March 28, the Diet voted to indicate its approval for the beginning of scientific whaling (Wong 2001, 117). On April 5, 1985, four days after the deadline that the Americans had established, Japan agreed to remove its objection to the moratorium on commercial whaling after a formal request from the United States that came with a threat. Japan's Minister of Agriculture, Forestry, and Fisheries said "it is an extremely regrettable choice, but it is unavoidable" (Yomiuri Shinbun 1985).

Two years later, as the June 1987 IWC meeting approached, the Fisheries Agency prepared a proposal to being a lethal scientific whaling project. Before Nakasone's visit to the United States, Nakasone expressed his concern to the Director General of the Fisheries

¹⁴ The Supreme Court would eventually rule on *Japan Whaling Association v. American Cetacean Society* in 1986; they ruled that the Packwood-Magnuson Amendment gave the president the option to sanction Japan but did not compel the president to do so.

¹⁵ The Japanese media expressed some confusion at Japan's position. *Asahi Shinbun* (1984a) reported that "While the Japanese side said that its promise is only to give up the taking of sperm whales by 1988, and not to end all commercial whaling, looking at the contents of this, it appears that ending all commercial whaling by 1988 cannot be avoided."

Agency that the US would interpret scientific whaling as “continuing commercial whaling in the guise of research whaling” (Wong 2001, 117). The Fisheries Agency proceeded anyway, and organized a proposal at the IWC for a scientific whaling program that involved scientific permits for the taking of 825 minke whales and 50 sperm whales annually. This plan worried Japanese fisheries, who asked the Fisheries Agency to reduce the number of scientific permits to 525. Nakasone also thought that the 525 figure was too high, and without consulting Fisheries Agency bureaucrats, Nakasone publically stated that the figures under consideration were too high, and “requested” that the number of permits be reduced to 300 (Wong 2001, 118).

The IWC passed a non-binding objection to Japan’s plan, and Japan resubmitted a plan on the last day of the meeting that involved the taking of 300 minke whales annually. America was critical of this proposal for scientific whaling, arguing that it was a violation of the moratorium on commercial whaling, and suggesting that, should Japan carry out this proposal, it would be sanctioned under the Pelly and Packwood-Magnuson Amendments (Shabecoff 1988; New York Times 1988). This threat was not successful in convincing Japan to give up its scientific whaling program. In late January 1988, Japan took its first whales with scientific permits, and, and as soon as the U.S. received confirmation of Japanese whaling, the US certified Japan under the Pelly Amendment and consequently ended all Japanese fishing in the US EEZ (Martin and Brennan 1989, 304-306).

The Birth of the Scientific Whaling Regime Teach and Two-Level Games

An initial glance at the above short history might suggest that it does not support the predictions of the theory of two-level games. After all, the theory predicted that the Reagan administration would only make limited use of its ability to threaten and sanction Japan with the Pelly and Packwood-Magnuson Amendments, and yet sanctions used twice and

threatened even more times. However, the sanctions that the Reagan Administration actually threatened and used were weak both in real terms and compared with the kinds of sanctions that the administration *could have* threatened and applied to Japan for three reasons. First, the Pelly Amendment gives the president the ability to ban all imports of fish products from the offending country. However, the Reagan Administration never threatened to do this. Second, when the Reagan Administration reduced Japan's fishing allocations in the US EEZ in 1983, they reduced that allocation by significantly *less* than the 50% that the Amendment allowed.

Third, by permitting Japan to continue whaling until 1988 without penalty, the Reagan Administration virtually eliminated the economic harm that they could do to Japan under the Packwood-Magnuson Amendment. This is because a 1982 amendment to the Fisheries Conservation and Management Act eliminated all fishing rights for foreigners in the US EEZ after six years except for those directly involved in joint ventures with US firms (Peterson 1992, 180). Thus, regardless of what else happened, 1988 was scheduled to be the last year of Japanese allocations in the American EEZ, and in 1988, Japan had only requested an allocation of 8000 tons of fish (Wilkinson 1989, 285), compared with the 1.35 million ton allocation Japan had received in 1980 (Suisan Nenkan 1981). For a visual representation of the decreasing Japanese catch in the US EEZ, see **Figure 2**.

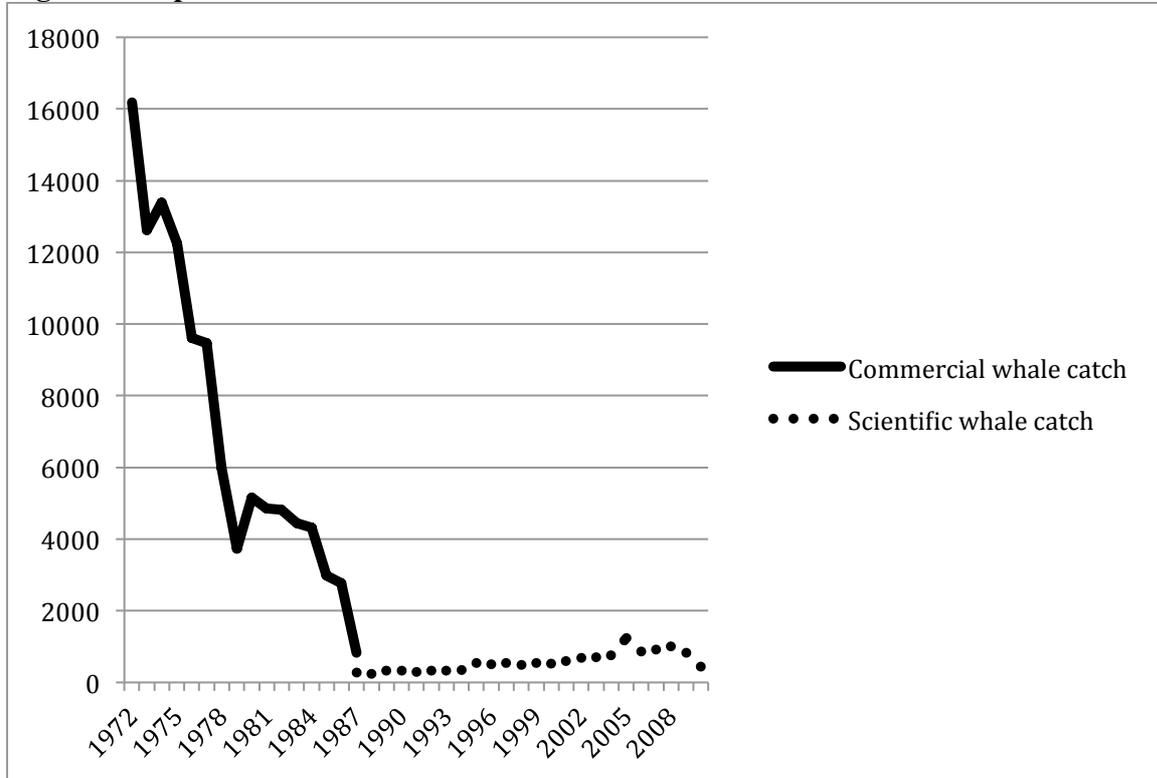
[FIGURE 2 ABOUT HERE]

On the Japanese side, as a moderate supporter of Japanese whaling positioned against a divided Diet, Nakasone was in a strong domestic position to get what he wanted. His main domestic opponent was the Fisheries Agency, which attempted to walk back the 1984 agreement and then to grant itself a number of scientific permits which, to Nakasone's mind, was too transparently a ploy to continue commercial whaling by another name. In responding to the domestic and diplomatic incentives of his day, Nakasone (perhaps

unintentionally) helped to build and institutionalize the scientific whaling regime, a regime which continues to exist up until this day. Perhaps the main lesson of the birth of this regime is that it was the threat of economic costs to a major Japanese industry—fisheries—which created the kind of division in the Diet which made an agreement possible. Even though this agreement was not ideal from the perspective of anti-whaling groups, in the absence of this pressure, it is difficult to imagine Japan giving up commercial whaling in 1984. Similarly, in the absence of credible threats to a major domestic industry, this case it is unlikely that international pressure—even pressure that could come with an unfavorable ICJ ruling—would cause Japan to alter its scientific whaling regime in the near future.

Tables and Figures

Figure 1: Japan's Annual Whale Catch



Sources: IWC (1973-2000), IWC (2012)

Table 1: Two-Level Games and American Threats of Sanctions

		<i>Distribution of preferences in the US Congress</i>	
		Homogenous	Heterogeneous
<i>U.S. President's position on whaling relative to median legislator</i>	Median congressperson more anti-whaling than president	Limited use of Packwood-Magnuson Amendments to pressure Japan on whaling	No use of Pelly and Packwood-Magnuson Amendments to pressure Japan on whaling
	Median congressperson less anti-whaling than president	Moderate use of Packwood-Magnuson Amendments to pressure Japan on whaling	Maximal use of Packwood-Magnuson Amendments to pressure Japan on whaling

Table 2: Two-Level Games and Japanese Response to American pressure

Distribution of preferences in the Diet

Homogenous

Heterogeneous

Japanese Prime Minister's position on whaling relative to median DM

Median DM more pro-whaling than PM

Median DM less pro-whaling than PM

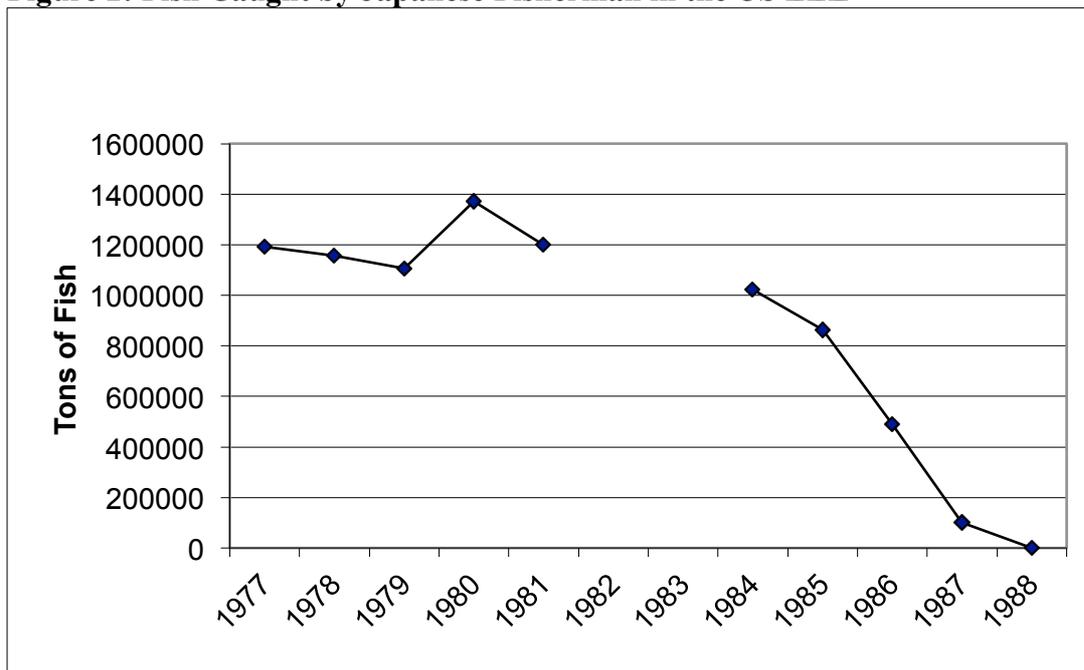
Limited concessions to American pressure on whaling

Limited concessions to American pressure on whaling

Limited domestic consequences for PM conceding to as much US pressure as she/he wants

Limited domestic consequences for PM conceding to as little US pressure as she/he wants

Figure 2: Fish Caught by Japanese Fisherman in the US EEZ¹⁶



Data from Suisan Nenkan, 1977-1990.

¹⁶ According to Akaha (1985), 1977 was the first year that Japan and the US had a quota for the US EEZ, so 1977 is the first year that I consider.

References

- Akaha, Tsuneo. 1985. *Japan in Global Ocean Politics*. Honolulu: University of Hawaii Press.
- Aron, William, William Burke, and Milton M.R. Freeman. 2002. "Scientists versus Whaling: Science, Advocacy, and Errors of Judgement." *BioScience* 52 (12):1137-40.
- Asahi Shinbun. 1983. "Hogei de Nichibei ga Asukara Kyōgi." *Asahi Shinbun*, November 16.
- . 1984a. "Bei, Gyokaku Seisai de Semaru; Nihon 'Nao Kyōgi no Yochi' [America Presses for Fishery Allocation Sanctions; Japan says 'Still Room for Negotiation]." *Asahi Shinbun*, November 14.
- . 1984b. "Hogeisen Futatabi Shukkō." *Asahi Shinbun*, November 6, 2.
- Caron, David. 1989. "International Sanctions, Ocean Management, and the Law of the Sea: A Study of Denial of Access to Fisheries." *Ecology Law Quarterly* 16:311-54.
- Catalinac, Amy L., and Gerald Chan. 2005. "Japan the West, and the Whaling Issue: Understanding the Japanese Side." *Japan Forum* 17 (1):133-63.
- DeSombre, Elizabeth R. 2000. *Domestic Sources of International Environmental Policy: Industry, Environmentalists, and U.S. Power*. Cambridge, Mass.: MIT Press.
- Duus, Peter. 1997. *The Japanese Discovery of America: A Brief History with Documents*. Boston: Bedford Books.
- Gales, Nicholas J., Toshio Katsuya, Phillip J. Clapham, and Robert L. Brownwell. 2005. "Japan's Whaling Plan Under Scrutiny." *Nature* 425:883-4.
- Green, Shane. 2002. "For Japan, Continued Pursuit Of Whales Is A Matter Of Principle." *Sydney Morning Herald*, May 25, 21.
- Hirata, Keiko. 2004. "Beached Whales: Examining Japan's Rejection of an International Norm." *Social Science Japan Journal* 7 (2):177-97.
- Krauss, Ellis. 1993. "U.S.-Japan Negotiations on Construction and Semiconductors, 1985-1988: Building Friction and Relation-Chips." In *Double-Edged Diplomacy: International Bargaining and Domestic Politics*, ed. P. B. Evans, H. K. Jacobson and R. D. Putnam. Berkeley: University of California Press.
- Leheny, David. 2006. "A Narrow Place to Cross Swords: Soft Power and the Politics of Japanese Popular Culture in Asia." In *Beyond Japan: The Dynamics of East Asian Regionalism*, ed. P. J. Katzenstein and T. Shiraiishi. Ithaca: Cornell University Press.
- . 2011. "The Other Rashomon Story: International Norms and the Constructions of Japanese-ness." In *The Routledge Handbook of Japanese Politics*, ed. A. Gaunder. London: Routledge.
- Martin, Gene S, Jr., and James W. Brennan. 1989. "Enforcing the International Convention for the Regulation of Whaling: The Pelly and Packwood-Magnuson Amendments." *Denver Journal of International Law and Policy* 17:293-315.
- Milner, Helen V. 1997. *Interests, Institutions, and Information: Domestic Politics and International Relations*. Princeton, NJ: Princeton University Press.
- Mitchell, Ronald. 1998. "Forms of Discourse, Norms of Sovereignty: Interests, Science, and Morality in the Regulation of Whaling." In *The Greening of Sovereignty in World Politics*, ed. K. Litfin. Cambridge, MA: MIT.
- Miyaoka, Isao. 2003. *Legitimacy in International Society: Japan's Reaction to Global Wildlife Preservation*. New York: Palgrave Macmillan.
- New York Times. 1984. "U.S.-Japan Accord on Whaling." *The New York Times*, November 14.
- . 1988. "Japan and Iceland Will Defy Ban on the Killing of Whales." *The New York Times*, January 24, 18.

- Normile, Dennis. 2000. "Japan's Whaling Program Carries Heavy Baggage." *Science* 289 (5488):2264-5.
- Pempel, T.J. 1998. *Regime Shift: Comparative Dynamics of the Japanese Economy*. Ithaca, NY: Cornell University Press.
- Peterson, M. J. 1992. "Whalers, Cetologists, Environmentalists, and the International Management of Whaling." *International Organization* 46.
- Reagan, Ronald, and Douglas Brinkley. 2009. *The Reagan Diaries*. 1st ed. 2 vols. New York: HarperCollins.
- Scheiber, Harry N. 2001. *Inter-Allied Conflicts and Ocean Law: 1945-53: The Occupation Command's Revival of Japanese Whaling and Marine Fisheries*. Taipei: Institute of European and American Studies, Academia Sinica.
- Schoppa, Leonard. 1997. *Bargaining With Japan: What American Pressure Can and Cannot Do*. New York: Columbia University Press.
- . 2002. "Domestic Politics." In *U.S.-Japan Relations in a Changing World*, ed. S. K. Vogel. Washington, D.C.: Brookings Institution Press.
- Shabecoff, Philip. 1984a. "Sanctions Sought Against Japanese Whalers." *The New York Times*, November 3.
- . 1984b. "U.S. Presses Japan to Halt its Whale Hunting." *The New York Times*, January 1.
- . 1988. "U.S. Warns Japan Not to Kill Whales in Antarctic." *The New York Times*, January 22.
- Stoett, Peter J. 1999. *The International Politics of Whaling*. Vancouver: University of British Columbia Press.
- Strand, Jonathan R., and John P. Tuman. 2012. "Foreign Aid and Voting Behavior in an International Organization: The Case of Japan and the International Whaling Commission." *Foreign Policy Analysis*.
- Suisan Nenkan. 1977-1990. *Suisan Nenkan (The Fisheries Yearbook)*. Tokyo: Suisansha.
- Thayer, Nathaniel B. 1985. "Japan in 1984: The Nakasone Era Continues." *Asian Survey* 25 (1):51-64.
- Tønnessen, J. N., and A. O. Johnson. 1982. *History of Modern Whaling*. Translated by R. I. Christophersen. London: C. Hurst and Company.
- Wilkinson, Dean M. 1989. "The Use of Domestic Measures to Enforce International Whaling Agreements: A Critical Perspective." *Denver Journal of International Law and Policy* 17:271-91.
- Wong, Anny. 2001. *The Roots of Japan's International Environmental Policies*. New York: Garland.
- Yomiuri Shinbun. 1984. "Mada Koshō no Yochi ha Aru; Suisanchō Chōkan [Direction of Fisheries Agency: There is Still Room for Negotiation]." *Yomiuri Shinbun*, November 14.
- . 1985. "88 Nen 2 Gatsu Kagiri de Maku; Bei ni Seishiki Tsūkoku he [By the End of March, 1988, It's Over; Formal Communication Sent to America]." *Yomiuri Shinbun*, April 5.