

# Executives, legislatures, and whales: the birth of Japan's scientific whaling regime

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## 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 was not much concerned about the issue. Nakasone was also not particularly concerned about whaling, and he initially was faced with a Diet that was divided on how to deal with whaling (although it became less divided over time). Ultimately, these circumstances led Japan to develop the scientific whaling regime that persists to this day.

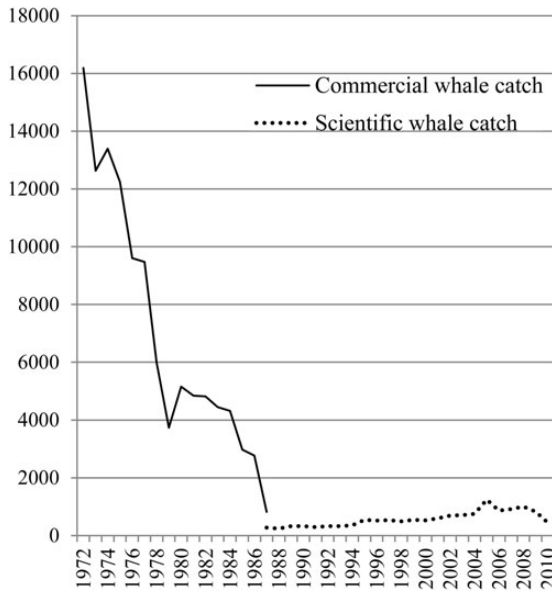
## 1 Introduction

Japan's scientific whaling regime<sup>1</sup> was relatively stable between the beginning of scientific whaling in 1988 and the 2014 decision by the International Court of Justice (ICJ) that Japan's scientific whaling program violated Japan's obligations under international law. During that period, Japan annually issued itself scientific permits for the killing of anywhere from 300 to 1200 whales. In addition, Japan used both financial incentives and diplomacy to attempt to build a coalition of countries at the International Whaling Commission (IWC) that would be able to overturn the moratorium on commercial whaling that was begun in 1982 (Morikawa, 2009, pp. 77–117; Strand and Tuman, 2012).

Japan's whaling policy is unusual when compared with Japan's general approach to foreign policy because, as David Leheny notes, 'whaling is one of the few areas in which Japanese practices seem at odds with international norms...' (2011, p. 364). This anomaly is puzzling from the perspective of international relations theorists who have increasingly turned their attention to the multiple ways in which international norms influence the rhetoric and behaviors of states (Finnemore and Sikkink, 1998; Checkel, 1999; Greenhill, 2010). Some skeptics of the causal power of international norms have suggested that when we look carefully at ideational causes we will see that material interests are a more important causal factor (Krasner, 1993). However, Japan's decision to defy international whaling norms is puzzling from this perspective as well, as there is no significant domestic constituency that benefits economically from Japan's scientific whaling 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,<sup>2</sup> as Fig. 1 demonstrates, the advent of scientific whaling has not been

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', 'Gaullism', or 'Scandinavian Corporatism.' All are mid-level consistencies that transcend individual governments but are far more differentiated than 'democracy' or 'capitalism' (Pempel, 1998).

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



**Figure 1** Japan's annual whale catch. Sources: IWC (1973–2000) and IWC (2012).

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 IWC moratorium on commercial whaling for the whole season, Japan took only 241 whales.<sup>3</sup> 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.

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 ICJ just ruled against Japan in a case brought by Australia, which argues that Japanese Antarctic whaling

3 In this paper, I follow the practice of the IWC in identifying a whaling season by the year in which the winter began. Therefore, 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.

violates Japan's obligations under international law. 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 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 the scientific whaling regime 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,<sup>4</sup> the Japanese Prime Minister, was particularly interested in efforts to save the whales or Japanese whaling, each head of state was negotiating from a domestic political context where important actors were 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 seemed to please 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. Finally, I examine the buildup to the 1984 US–Japan negotiations that resulted in the beginning of the scientific whaling regime as well as Japanese and American policy in the wake of these negotiations.

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4 When referring to Japanese names, I use the family name first.

## 2 Why scientific whaling?

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 US pressure in convincing Japan to change its policy. For example, Keiko Hirata (2004, p. 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 US EEZ'. Flowers (2008, p. 103) and Peterson (1992, p. 181) make similar arguments about the importance of US pressure in convincing Japan to withdraw its objection to the moratorium on commercial whaling. Second, Catalinac and Chan (2005, p. 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 US 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 decision-making process (2004, pp. 145–146). Second, many argue that Japan keeps whaling because of whaling's importance to Japanese culture. Hirata (2004, pp. 141–144) 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, p. 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, p. 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 leaders are concerned about 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, then why would Japan withdraw its objection to the moratorium?

### 3 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, p. 437). Scholars of Japan have used Putnam's insight to study trade negotiations between Japan and the United States (Krauss, 1993; Schoppa, 1997) and the US 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, pp. 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 United States 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 hearings.<sup>5</sup> While many of the important political decisions in Japan are made within the Liberal Democratic Party's (LDP's) internal policy apparatus and behind closed doors in bureaucratic agencies, I focus on Diet hearings for two reasons. First, there is a practical consideration: minutes from private meetings are not made public. Second, given that Diet members (DMs; and LDP Diet members in particular) have backroom locations in which they can express their concerns privately, if they choose to express those concerns in public Diet hearings that must mean that they feel strongly

5 Flowers (2008) examines Diet hearings that discussed whaling between 1986 and 1988. While this is helpful in understanding 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.

about those concerns. In other words, the presence of debate in Diet hearings does suggest that there is significant disagreement among DMs.

In addition, I also consider Japanese and American media accounts,<sup>6</sup> Japanese government documents, and interviews with key players on the Japanese side of the 1980s whaling negotiations.<sup>7</sup> I focus my interviews on the Japanese side 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.

## 4 Reagan and the American Congress on whaling

A glance at the legislative record of the US 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.<sup>8</sup> 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)<sup>9</sup> and the 1979 Packwood–Magnuson

6 I did index searches of archives of three Japanese newspapers: *Asahi Shimbun*, *Yomiuri Shimbun*, and *Nihon Keizai Shimbun* for coverage of key events in Japanese whaling in the 1980s. Similarly, I did online searches of the *New York Times* coverage of key events.

7 I interviewed two high-level Ministry of Agriculture, Forestry, and Fisheries (MAFF) bureaucrats who had been involved with whaling negotiations in the 1980 as well as one MAFF bureaucrat who had been involved with whaling negotiations in the 1990s. I also interviewed two representatives from Kyoko Senpaku, the private corporation that Japan employs to do its whaling, and an anti-whaling activist.

8 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.

9 The Fisheries Protection Act was originally passed in 1967 (DeSombre, 2000, p. 113).



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](#), p. 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](#), p. 113).

Unlike the Pelly Amendment, which was written to address Danish, Norwegian, and West German salmon overfishing ([DeSombre, 2000](#), pp. 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 that the IWC must lose 50% of their fishing quotas in the US Exclusive Economic Zone (EEZ) ([Peterson, 1992](#), pp. 172–173).<sup>10</sup>

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](#), p. 209). Japan also objected to the 1982 moratorium on commercial whaling. While America did not certify Japan under the Pelly Amendment, America did apply a 9% cut to Japan’s 1983 allocation in the US EEZ – which represented around 102,000 metric tons of fish – in order to signal its displeasure to Japan ([Caron, 1989](#), p. 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

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<sup>10</sup> A state’s EEZ 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](#), p. 167).

Reagan kept of his presidency, and both occurred in that presidency's waning days. On 15 January 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' (Reagan and Brinkley, 2009, p. 568). A few days later, he wrote 'Japan fudged in Internat. Whale Protection Agreement. If continues we can deny them fishing rights in our waters' (1989, p. 569). As a Republican who was primarily concerned with the Cold War internationally and deregulation domestically, it is hardly surprising that Reagan did not have strong preferences regarding Japanese whaling.

The whaling negotiations that Japan and the United States 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 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

**Table 1** Two-level games and American threats of sanctions

		Distribution of preferences in the US Congress	
		Homogenous	Heterogeneous
<i>US President's position on whaling relative to median legislator</i>	Median congressperson more anti-whaling than the president	Limited use of Pelly and 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 the president	Moderate use of Pelly and Packwood–Magnuson Amendments to pressure Japan on whaling	Maximal use of Pelly and Packwood–Magnuson Amendments to pressure Japan on whaling

Packwood–Magnuson Amendments only sparingly in their negotiations with Japan.

## 5 Nakasone and the Japanese Diet on whaling

Unlike the US Congress, the Japanese Diet was relatively divided on the question of whaling. While no 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 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’ (HOC, 1983<sup>11</sup>). 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 (HOR, 1983<sup>12</sup>; HOC, 1984a).

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 MAFF 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 asked 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,

11 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.

12 I use the acronym ‘HOR’ to represent ‘House of Representatives,’ the Lower House of the Japanese Diet.

1984b). Similarly, CGP DM Karita Teiko argues that Japan is being too meek (*sunao sugiru*) in its negotiations with the United States and should advocate its pro-commercial whaling position more forcefully (HOC, 1984b).

In the years after the 1984 negotiation between the United States and Japan (discussed in more depth below), both the LDP and the Japanese Diet became increasingly unified in their support of Japanese whalers. In 1985, LDP politicians formed the Parliamentary League in Support of Whaling (Wong, 2001, p. 120), and in July, 1987 the House of Representatives Agriculture, Forestry, and Fisheries Committee passed a resolution that encouraged Japan to attempt to gain the support of other countries for their scientific whaling program and, if they were unable to gain such support, to consider seceding from the IWC (Japan Economic Newswire, 1987).

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 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 US national interests' (1985, p. 59). Indeed, in January 1985 Reagan said that 'there is no relationship more important to peace and prosperity in the world than that between the US and Japan' (Buckley, 1992, epigraph). Although Nakasone shared Reagan's commitment to the Cold War and the US–Japan relationship, Nakasone governed during a time of intense trade friction between Japan and the United States, and as Ellis Krauss (1993, p. 280) notes, 'Nakasone's domestic political popularity and clout within his party had come to rest heavily on his skill in mitigating US trade retaliation.'

Regarding whaling, Nakasone appeared to have a mild preference in favor of the anti-whaling side. In 1983 and 1984, Nakasone did not once address the issue of whaling in a Diet hearing. Pro-whaling members of the Japanese bureaucracy did not consider Nakasone an ally,<sup>13</sup> but he was not an outspoken opponent of whaling either. Nakasone was a famously

13 Satate Goroku (1997, p. 115), a leading fisheries bureaucrat in Japan during the 1980s, argues that the experience of seeing protesters in the United States with papier-mâché whales on a visit to the United States influenced Nakasone to want to avoid that kind of bad publicity in the future.

outspoken politician about a variety of issues, so the fact that he did not say much about whaling suggests that, even if he had preferences about whaling, he did not hold those preferences very intensely. In 1987, Nakasone did attempt to convince the Fisheries Agency to avoid pushing forward with its plans to start a scientific whaling program (Wong, 2001, p. 117), which suggests that at least by 1987 he was on the anti-whaling side.

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). In the period leading up to the 1984 negotiations, because Nakasone was relatively anti-whaling and was faced with a divided Diet, he had freedom to do what he wanted in regards to whaling (as Table 2 suggests, he had this freedom regardless of whether he was more or less anti-whaling than the median DM). This freedom was magnified by the fact that the cleavages on whaling were not along party lines, and thus Nakasone did not risk either weakening himself within his party or strengthening the opposition by taking a position on whaling. However, in the years after the 1984 agreement between Japan and the United States, Nakasone was increasingly faced with a unified, pro-whaling Diet. Nakasone was thus able to make fewer concessions to the United States as domestic actors in Japan prepared a proposal for Scientific Whaling, which was to begin in 1987.

## 6 Building toward the 1984 negotiations

In order to fruitfully understand the two-level game that Reagan and Nakasone played in the 1980s, it is first helpful to establish some historical background of each country's position on whaling. 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 that 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, p. 25). Whalers continued to have contact with Japan throughout the nineteenth 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,

**Table 2** Two-level games and Japanese response to American pressure

		Distribution of preferences in the Diet	
		Homogenous	Heterogeneous
<i>Japanese Prime Minister's position on whaling relative to median DM</i>	Median DM more pro-whaling than PM	Limited concessions to American pressure on whaling	Few domestic consequences for PM conceding to as much US pressure as she/he wants
	Median DM less pro-whaling than PM	Limited concessions to American pressure on whaling	Few domestic consequences for PM conceding to as little US pressure as she/he wants

for she is already on the threshold' (cited in [Duus, 1997](#), p. 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 cast-away American sailors and whalers' ([Duus, 1997](#), p. 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 US 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](#), p. 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](#), p. 136).<sup>14</sup>

Beginning in the 1960s, most western countries gave up commercial whaling for two reasons. First, around the beginning of the twentieth century, products such as kerosene and margarine were discovered to be effective replacements for whale oil ([Tønnessen and Johnson, 1982](#), p. 229; [Stoett, 1999](#), p. 59). However, whale oil still had a number of uses, and thus these

14 The policy of promoting Japanese whaling had opponents within the US government and even more vocal opponents among the allied powers – in particular, the UK, Australia, and New Zealand. For a discussion of conflicts among the Allies on the issue of Japanese whaling during the occupation, see [Scheiber \(2001, ch. 1\)](#).

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, p. 162). These economic pressures were particularly acute in countries that did not have a domestic market for whale meat (a category that includes all major whaling states except Japan).<sup>15</sup> 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, p. 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 whaling companies went out of business in 1972, but even before it went out of business as it was too small to have substantial political impact (Stoett, 1999, p. 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, p. 144), began to take the advice of scientists regarding the future of whale 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, p. 164).<sup>16</sup> Second, a transnational advocacy network began to call for a 10-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 stock (Peterson 1992, pp. 169–170; Mitchell, 1998, pp. 153–154).

15 The USSR did not have a domestic market for whale meat, but Soviet fleets were able to remain solvent because of ‘large state subsidies’ (Peterson, 1992, p. 162).

16 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, p. 491). The Antarctic quota remained at or around 16,000 for almost 20 years, until the 1962–63 season (see Tønnessen and Johnson, 1982, p. 750 for detailed quota data).

This movement's first big success occurred when the 1972 Stockholm Conference passed a resolution calling for a 10-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.<sup>17</sup>

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 Japan's 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 United States met to discuss this and US allocations to Japanese fishing companies in the US EEZ in November 1983 (Asahi Shimbun, 1983), but did not reach any agreement. The countries met again in November 1984. Unlike the 1983 meeting, which only lasted for 2 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 Shimbun, 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).<sup>18</sup> 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 1 April 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

17 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, p. 180).

18 In 1986, the US Supreme Court ruled in *Japan Whaling Association v. American Cetacean Society* that the Packwood–Magnuson Amendment gave the president the option to sanction Japan but did not compel the president to do so.



whaling, not all forms of commercial whaling (Yomiuri Shimbun, 1984).<sup>19</sup> Indeed, the issue of the future of Japanese commercial whaling was still on the agenda of US–Japan trade negotiations in January 1985 (The Japan Economic Journal, 1985). On 28 March 1985, the Diet voted to indicate its approval for the beginning of scientific whaling (Wong, 2001, p. 117); in short, Nakasone was now clearly faced with a pro-whaling Diet in a way that he had not been in the past. On 5 April, 4 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 to invoke the Pelly and Packwood–Magnuson Amendments. Japan’s Minister of Agriculture, Forestry, and Fisheries said of the decision to remove Japan’s objection to the moratorium on commercial whaling ‘it is an extremely regrettable choice, but it is unavoidable’ (Yomiuri Shimbun, 1985).

Two years later, as the June 1987 IWC meeting approached, the Fisheries Agency prepared a proposal to begin a lethal scientific whaling project. Before Nakasone’s visit to the United States, Nakasone expressed his concern to the Director General of the Fisheries Agency that the United States would interpret scientific whaling as ‘continuing commercial whaling in the guise of research whaling’ (Wong, 2001, p. 117). The Fisheries Agency proceeded anyway and organized a proposal at the IWC for a 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 publicly 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 nonbinding objection to Japan’s plan, and Japan re-submitted 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

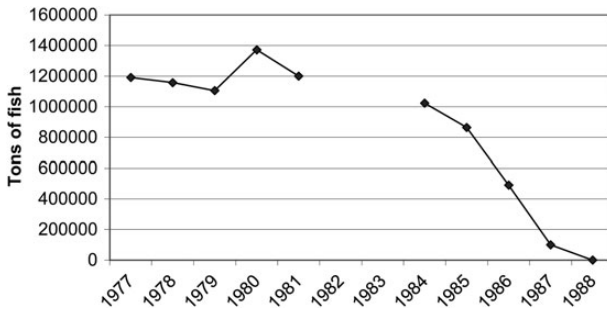
19 The Japanese media expressed some confusion at Japan’s position. *Asahi Shimbun* (1984a) reported that ‘While the Japanese side said that its promise is only to give up the taking of sperm whales by 1988, and not to end all commercial whaling, looking at the contents of this, it appears that ending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

commercial whaling, and suggesting that, should Japan carry out this proposal, it would be sanctioned under the Pelly and Packwood–Magnuson Amendments ([New York Times, 1988](#); [Shabecoff, 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 United States received confirmation of Japanese whaling, the United States certified Japan under the Pelly Amendment and consequently ended all Japanese fishing in the US EEZ ([Martin and Brennan, 1989](#), pp. 304–306).

## 7 The birth of the scientific whaling regime and two-level games

An initial glance at the above short history might suggest that the scientific whaling regime emerged in a manner inconsistent with 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 the United States used sanctions twice and threatened sanctions several 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 Japan. 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 6 years except for those directly involved in joint ventures with US firms ([Peterson, 1992](#), p. 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



**Figure 2** Fish caught by Japanese fisherman in the US EEZ.<sup>20</sup> Source: Data from *Suisan Nenkan* (1977–1990).

fish (Wilkinson, 1989, p. 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 Fig. 2. During the 1984 negotiations, both sides knew that the United States would lose much economic leverage to pressure Japan to stop whaling by 1988 because of this 1982 law. The fact that the 1984 agreement allowed Japan to continue whaling until the 1988 season suggests that the Reagan administration was not serious about ending Japanese whaling, because the United States did not use all tools available to them to extract promises from Japan about its post-1988 behavior when the United States still had some economic leverage over Japan.

On the Japanese side, given that he was faced with a divided Diet during the 1984 negotiations, Nakasone was in a strong domestic position to get what he wanted. Furthermore, indeed, Nakasone got Japan to withdraw its objection to the moratorium on commercial whaling, which was a major victory for the anti-whaling side. However, as the Diet became increasingly pro-whaling, Nakasone's freedom to act in defiance of Japanese whaling interest decreased. He was thus not able to get the Fisheries Agency and its allies in the Diet to abandon their plan for scientific whaling; he had to settle for reducing the number of research permits that Japan issued itself rather than eliminating the program in its entirety. In short, 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 that continues to exist up until this day.

## 8 Conclusion

Japan's scientific whaling regime is puzzling because it is anomalous; Japan generally does not flaunt international public opinion (particularly the public opinion of advanced industrialized countries) so openly. Existing explanations of this regime's origin are problematic because they cannot explain the internal contradictions of the current whaling regime – Japan's acceptance of the IWC's moratorium on commercial whaling while continuing scientific whaling in the face of IWC criticism. Those explanations that focus on the cultural importance of whaling to Japan (or to Japanese bureaucrats) have a difficult time explaining Japan's decision to accept the moratorium in the first place. Those explanations that focus on the role of US pressure in getting Japan to accept the moratorium have a difficult time explaining Japan's decision to begin scientific whaling in the first place.

The theory of two-level games is useful in that it enables us to explain both of these seemingly contradictory policy decisions. Japan accepted the moratorium on commercial whaling because of pressure from the Reagan administration. While Reagan himself was hardly an environmentalist, he was faced with a legislature that was homogeneously anti-whaling. He thus had to do something, and he chose to make some economic threats against Japan to convince Japan to sign on to the moratorium. However, Reagan did not use all of the tools at his disposal, and in particular, he only chose to use tools that both he and the Nakasone administration knew would no longer be effective after 1988. This American pressure was more effective when it was faced with a divided Diet, which freed Nakasone to accept the moratorium with limited domestic political consequences. However, after 1984, as the Diet became more of a unified, pro-whaling voice, Nakasone began to lose this freedom. Because of the strength the Diet's pro-whaling voice (a change that was perhaps made possible by the fact that United States no longer had many EEZ allocations to take away from Japanese fisheries), Nakasone was only able to limit the scope of the research whaling program; he was not able to stop the program entirely.

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 – that created the kind of division in the Diet that made an agreement possible. Even though the 1984 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, it is unlikely that international pressure – even pressure that may come with the recent unfavorable ICJ ruling – could cause Japan to end its whaling program in the near future. Indeed, in the wake of the 31 March 2014 decision by the ICJ that Japan's Antarctic scientific whaling program is a violation of Japan's obligations under international law, the House of Representatives Committee on Agriculture, Forestry, and Fisheries 'demand that the government of Prime Minister Shinzo Abe continue to allow the country to hunt whales' (Mie, 2014).

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