

COURT ONLINE COVER PAGE

**IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria**

CASE NO: 2024-029857

In the matter between:

Birdlife South Africa, Birdlife South Africa

Plaintiff / Applicant / Appellant

and

The Minister of Forestry, Fisheries and the Environment, The Deputy Director-General: Fisheries Management, Department of Forestry, Fisheries and the Environment, The Deputy Director-General: Oceans and Coasts, Department of Forestry, Fisheries and the Environment, The South African Pelagic Fishing Industry Association, Eastern Cape Pelagic Association

Defendant / Respondent

Review

NOTE: This document was filed electronically at 11:48:39 AM South African Standard Time. The time and date the document was filed by the party is indicated on the header of each page of this document.



Registrar on 19/3/2024 (AST). The time and date on the header of each



ELECTRONICALLY SIGNED BY:

Registrar of High Court of South Africa, Gauteng Division, Pretoria

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: _____

In the matter between:

BIRDLIFE SOUTH AFRICA

First Applicant

**SOUTH AFRICAN FOUNDATION FOR THE
CONSERVATION OF COASTAL BIRDS**

Second Applicant

and

**THE MINISTER OF FORESTRY, FISHERIES AND
THE ENVIRONMENT**

First Respondent

**THE DEPUTY DIRECTOR-GENERAL: FISHERIES
MANAGEMENT, DEPARTMENT OF FORESTRY,
FISHERIES AND THE ENVIRONMENT**

Second Respondent

**THE DEPUTY DIRECTOR-GENERAL: OCEANS
AND COASTS, DEPARTMENT OF FORESTRY,
FISHERIES AND THE ENVIRONMENT**

Third Respondent

**THE SOUTH AFRICAN PELAGIC FISHING
INDUSTRY ASSOCIATION**

Fourth Respondent

EASTERN CAPE PELAGIC ASSOCIATION

Fifth Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the applicants intend applying to the above Honourable Court on a date to be determined and allocated by the Registrar for an order in the following terms:

1. The matter is to be heard as one of urgency in terms of Rule 6(12) and, insofar as may be necessary, dispensing with the forms, service and time-periods prescribed by the Uniform Rules of Court.

2. The decision by the first respondent of 4 August 2023, to put in place the Interim Closures (as defined in the founding affidavit) around the African Penguin breeding colonies at Dassen Island, Robben Island, Stony Point, Dyer Island, St Croix Island and Bird Island (**the breeding colonies**) for a ten-year period, subject to review after six years, is reviewed and set aside (**the impugned decision**).

3. The impugned decision is substituted with a decision of this Honourable Court to put in place island closures around the breeding colonies for a ten-year period subject to review after six years in accordance with the maps attached to this notice of motion as "1".

4. In the alternative to paragraph 3 above:
 - 4.1 The impugned decision is remitted to the first respondent who is directed, within 90 days of this order, to delineate and implement new island closures around the breeding colonies for a ten-year period subject to a review after six years, in accordance with the trade-off mechanism recommended by the Panel (as defined in the founding affidavit), including by assessing delineations based on the mlBA-ARS method and using existing OBM models in a relative sense (**trade-off mechanism**).



4.2 To the extent that the Panel's report has not determined specific island closure delineations for each island, the first respondent must, in the process of complying with paragraph 4.1 above, refer the conservation sector analysis attached as "2" and any Industry assessment on the application of the trade-off mechanism to the Panel in order for the Panel to confirm the accuracy of the application of the trade-off mechanism and the delineations identified through its application based on currently available data.



4.3 Pending compliance with paragraph 4.1 above, the first respondent is directed, within 5 days of this order, to put in place island closures in accordance with the maps attached as "1".

5 To the extent necessary, the 180-day period provided for in section 7(1) of the Promotion of Administrative Justice Act, 3 of 2000 (**PAJA**) is extended in terms of sections 9(1)(b) and 9(2) of PAJA to the date on which these proceedings were instituted.

6 In the alternative to paragraph 5 above, to the extent necessary, the applicants' failure to institute the review proceedings within a reasonable time is condoned.

7 The first respondent is directed to pay the costs of this application, jointly and severally with any other respondents who oppose the application.

8 Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **ALISTAIR MC INTYRE MC INNES**, together with annexures and supporting affidavits attached thereto, will be used in support of this application.

TAKE NOTICE FURTHER that the applicants have appointed the address of their attorneys, as set out below, as the address at which they will accept service of all process in these proceedings.

TAKE NOTICE FURTHER that the applicants consent to electronic service in terms of Rule 4A(1)(c) of the Uniform Rules of Court.



TAKE NOTICE FURTHER that:

- (a) the first respondent is called upon in terms of Rule 53(1)(a) of the Uniform Rules of Court to show cause why the impugned decision should not be reviewed and set aside;
- (b) the first respondent is called upon, within **TEN DAYS** of receipt of this Notice of Motion, to despatch to the Registrar the record of the impugned decision, including all documents, electronic records, correspondence (including e-mails), reports, memoranda, evidence, transcripts of recorded meetings, and other information before her that relate to the making of the impugned decision, together with such reasons as the first respondent is by law required or may require to give or make, and to notify the applicants' attorneys that they have done so; and
- (c) the applicants may within **TEN DAYS** of receipt of the record from the registrar, amend, add to, or vary the terms of its Notice of Motion and supplement the founding affidavit, by delivery of a notice and accompany affidavit.

TAKE NOTICE FURTHER that any respondents who wish to oppose the relief sought are required:

- (a) within **TEN DAYS** of receipt of this Notice of Motion or any amendment thereto as contemplated in Rule 53(4), to deliver a notice to the applicants' attorneys that such respondents intend to oppose this application;
- (b) to appoint an address within 20 kilometres of the office of the Registrar at which the Respondents will accept notice and service of all process in such proceedings; and
- (c) within **TWENTY DAYS** of the expiry of the time period referred to in the Uniform Rule of Court 53(4), deliver such affidavits as they may desire in answer to the allegations made by the applicants.



Kindly place the matter on the roll accordingly.

DATED at CAPE TOWN on this the 18TH day of MARCH 2024.

A handwritten signature in black ink that reads "Handley". The signature is written in a cursive style and is positioned above a horizontal line.

BIODIVERSITY LAW CENTRE
Applicants' Attorneys
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Kirstenbosch
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CAPE TOWN

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Ref: BLC/Penguins2

C/O

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pieterh@nienaberattorneys.co.za
Ref: PHW/LT298

TO:
**THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
PRETORIA**

AND TO:
**THE MINISTER OF FORESTRY,
FISHERIES AND THE ENVIRONMENT**
First Respondent
Environment House, 473 Steve Biko and
Soutpansberg Road
Arcadia
PRETORIA



SERVICE BY SHERIFF

AND TO:
**THE DEPUTY DIRECTOR-GENERAL:
FISHERIES MANAGEMENT,
DEPARTMENT OF FORESTRY,
FISHERIES AND THE ENVIRONMENT**
Second Respondent
Environment House, 473 Steve Biko and
Soutpansberg Road
Arcadia
PRETORIA

SERVICE BY SHERIFF

AND TO
**THE DEPUTY DIRECTOR-GENERAL:
OCEANS AND COASTS, DEPARTMENT
OF FORESTRY, FISHERIES AND THE
ENVIRONMENT**
Third Respondent
Environment House, 473 Steve Biko and
Soutpansberg Road
Arcadia
PRETORIA

SERVICE BY SHERIFF

**AND TO:
THE SOUTH AFRICAN PELAGIC
FISHING INDUSTRY ASSOCIATION**
Fourth Respondent
1st Floor, Harbour Place
7 Martin Hammerschlag Way
Foreshore
CAPE TOWN

SERVICE BY SHERIFF

**AND TO:
EASTERN CAPE PELAGIC
ASSOCIATION**
131 Albert Road
Walmer
PORT ELIZABETH (GQEBERHA)

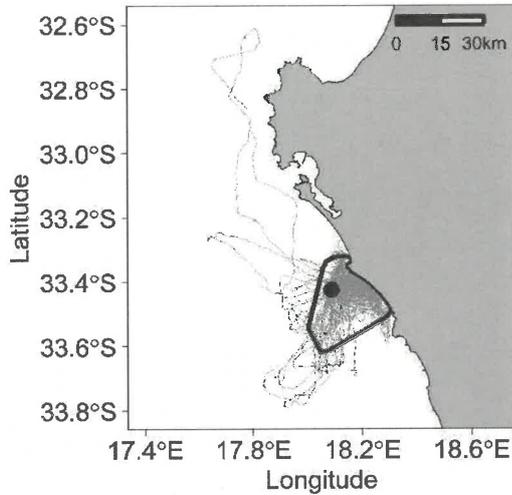
SERVICE BY SHERIFF



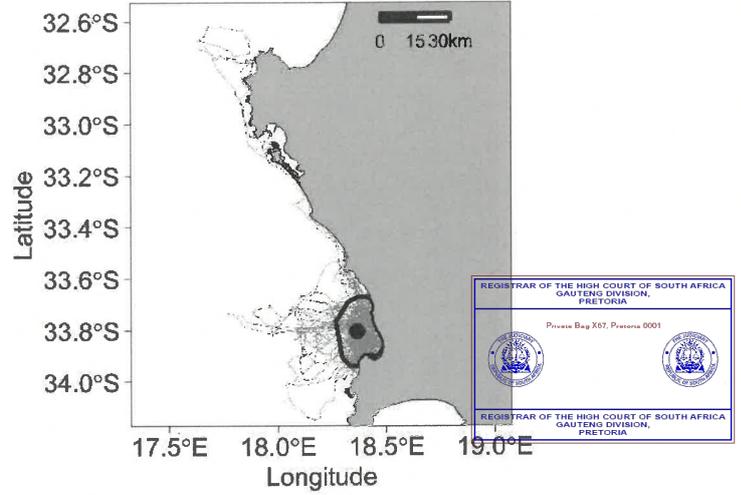
"1"

Closures resulting from application of Panel's recommended trade-off mechanism

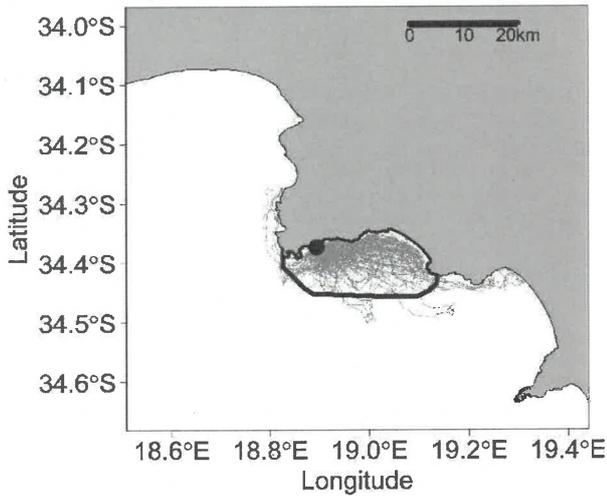
A) Dassen Island



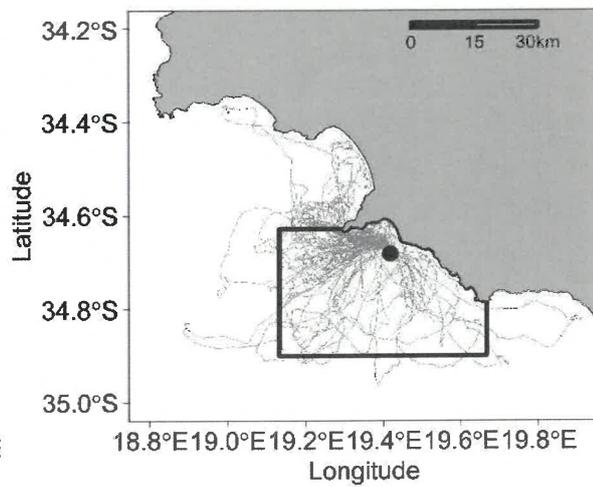
B) Robben Island



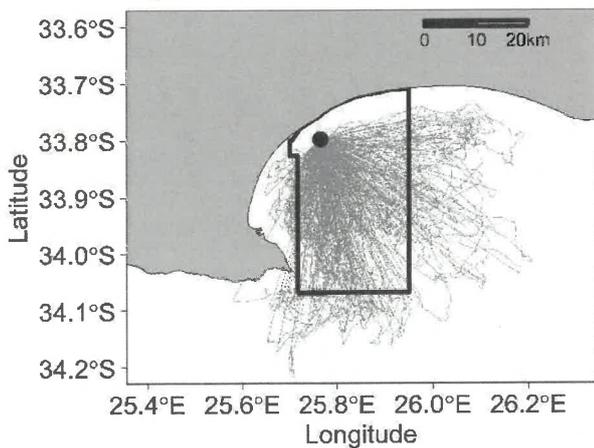
C) Stony Point



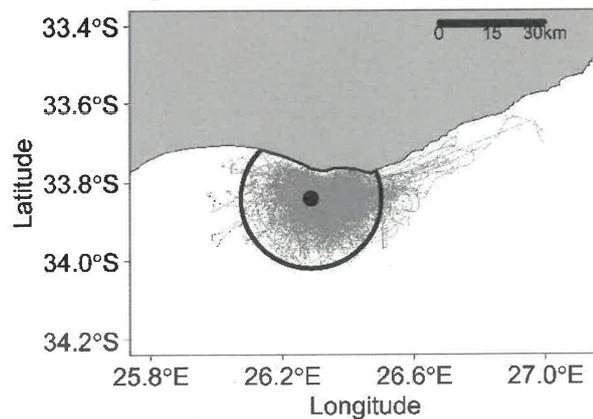
D) Dyer Island



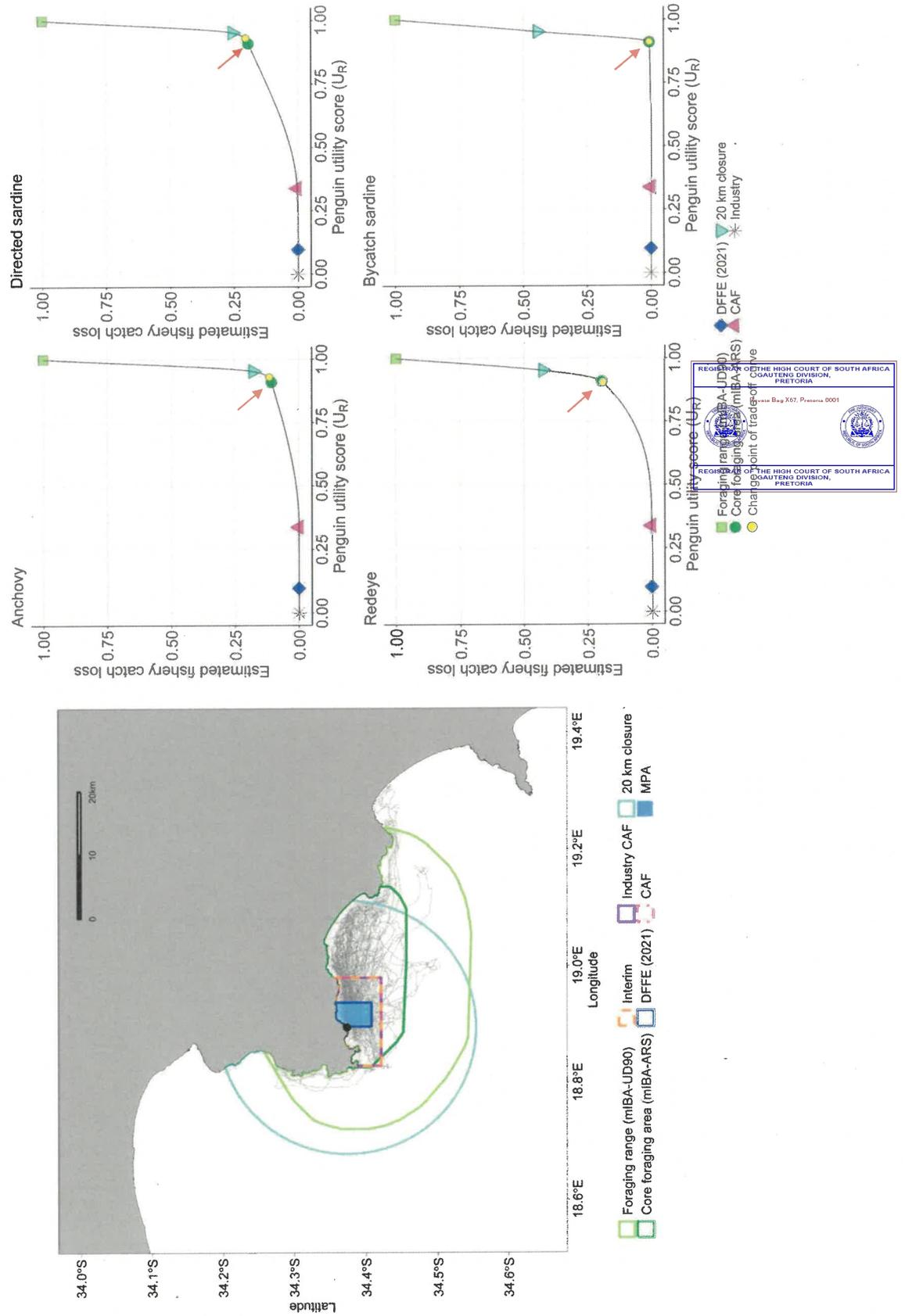
E) St Croix Island



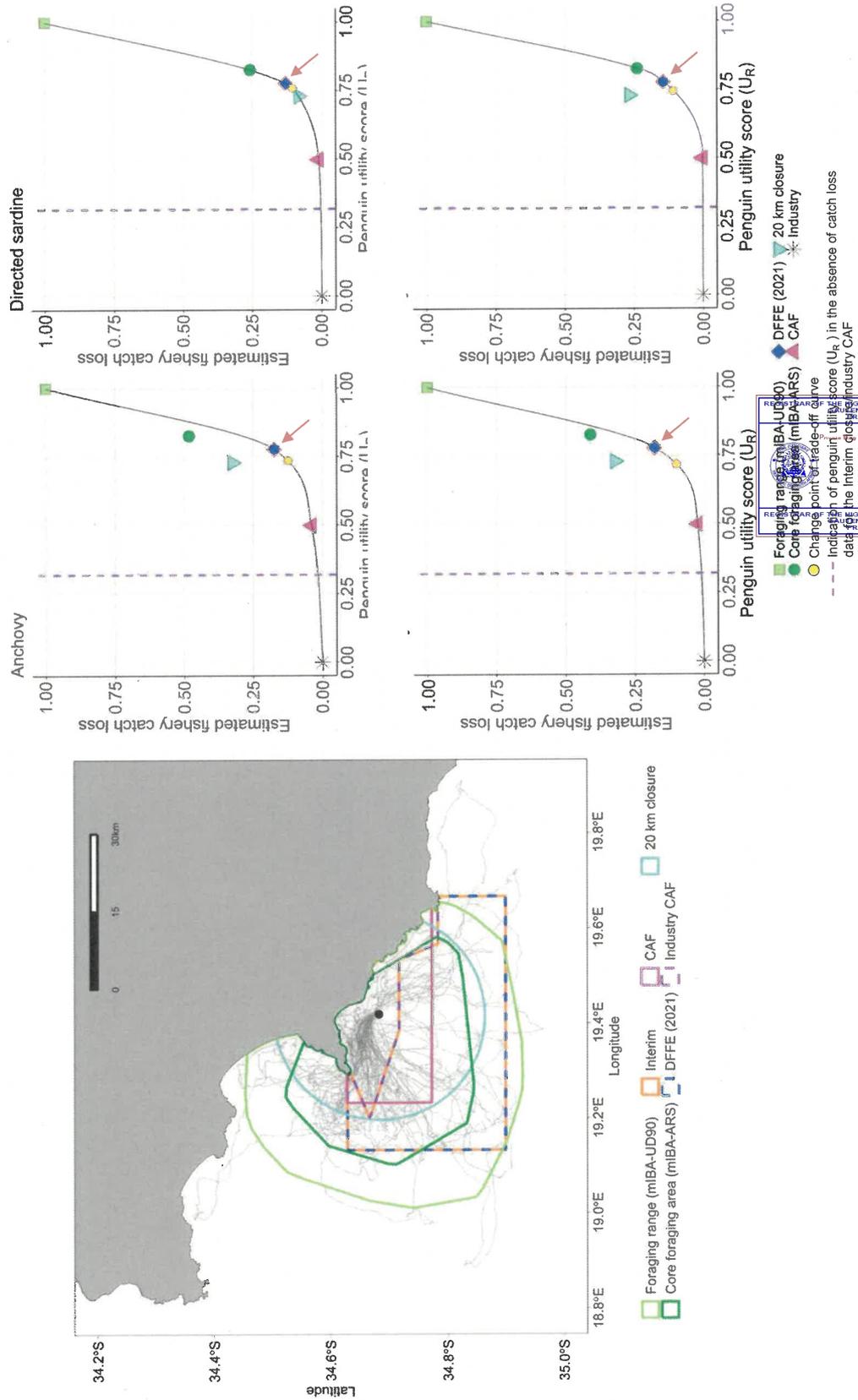
F) Bird Island



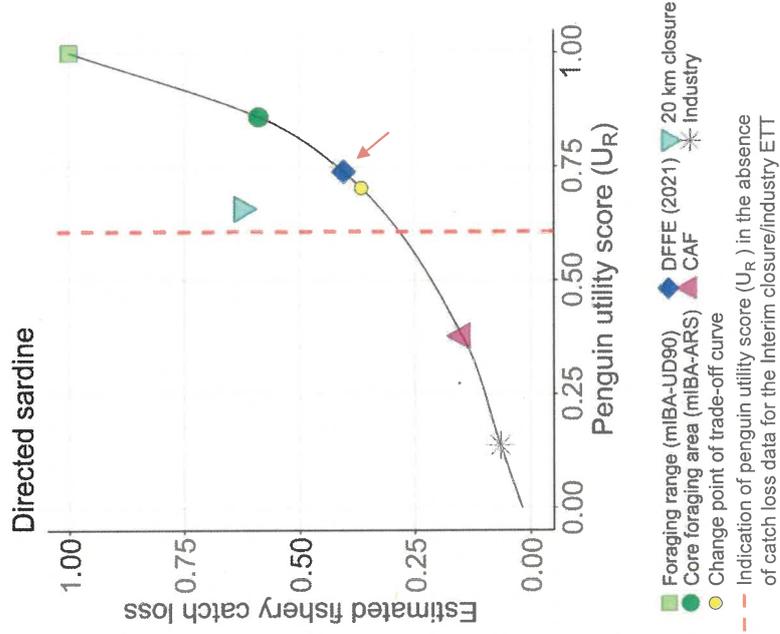
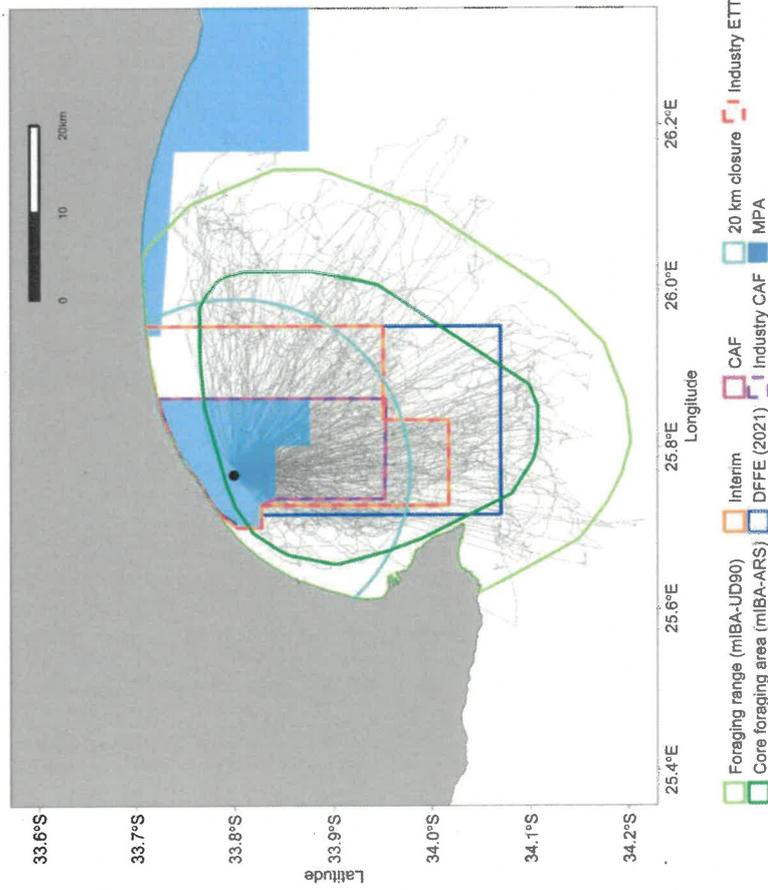
Stony Point



Dyer Island



St Croix Island



Bird Island

