

High Court victory for the Critically Endangered African Penguin

Settlement secures biologically meaningful foraging areas for African Penguins for next decade to help bring the species back from the brink of extinction.

BirdLife South Africa and SANCCOB today secured a historic victory for South Africa's Critically Endangered African Penguin when the Pretoria High Court issued [an order of court](#) after a hard-won settlement agreement was reached by the two conservation NGOs with commercial sardine and anchovy purse-seine fishers (subsequently endorsed by the State). The order provides for the delineations of no-take zones for the commercial sardine and anchovy fishery around six key African Penguin breeding colonies that lie within coastal areas where this commercial fishery operates. The six closures work together to secure biologically meaningful foraging areas for African Penguins in each of the west coast, southern Cape and Algoa Bay regions to help bring the species back from the brink of extinction. This settlement follows several weeks of exceptionally hard work and negotiations between the conservation NGOs and the commercial sardine and anchovy fishing industry.

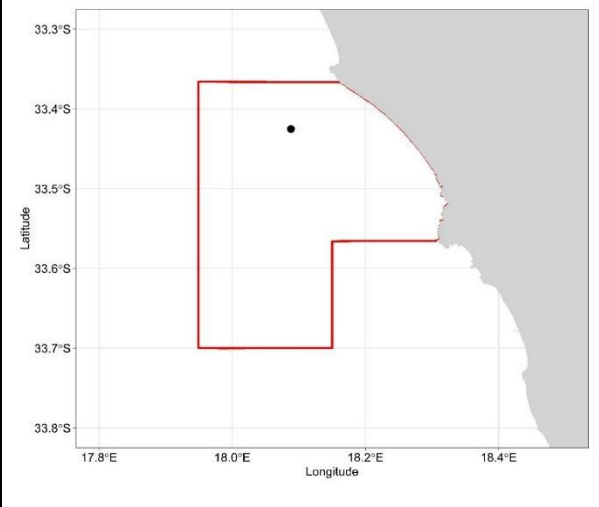
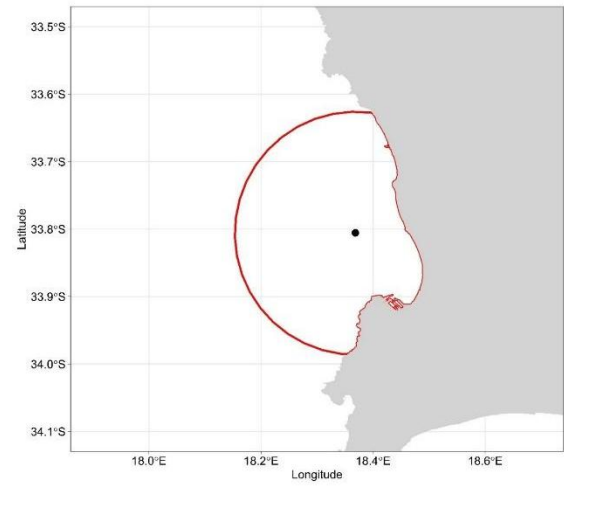
The order provides that the Department of Forestry, Fisheries and the Environment (DFFE) will have two weeks to ensure that these closures are implemented by amending the permit conditions applicable to commercial sardine and anchovy fishers (also covering redeye). These permit conditions are set to be renewed by the DFFE each January for the next 10 years. The 10-year period takes closures to the critical year, 2035, when the iconic African Penguin is predicted by scientists to be extinct in the wild – just a generation of penguins away.

After a difficult six years of battling disagreement from fisheries scientists [as penguin numbers dwindled](#) from 2018's count of 15,187 breeding pairs to just an estimated 8,750 at the end of 2023, BirdLife South Africa and SANCCOB took the difficult decision to resort to the courts in March 2024. Represented by the Biodiversity Law Centre, the environmental NGOs sought to hold the Minister accountable to the constitutional and statutory obligations to mitigate the threat posed by sardine and anchovy fishing to the world's African Penguin population – most of which remains in South Africa. While determined to litigate, the conservation organisations have consistently maintained that a settlement which benefits African Penguins by securing important foraging areas would be considered. Negotiations with the representatives of the sardine and anchovy commercial fisheries resulted in settlement, agreed to by the State, the night before the three-day hearing was about to start on 18 March 2025.

Today the agreement reached has been made an order of court. The court order makes it clear that the Minister's decision, announced on 4 August 2023, is reviewed and set aside. In addition, the order clearly sets out the maps and coordinates for the closures which will be in place from the date of the court order for a period of 10 years (subject to a scientific review after six years). It also confirms that these closures will be in place year-round (i.e. including during the full fishing season). This is in line with the [recommendations of the Expert Panel](#), which was convened by the Minister in October 2022 to advise on closures. The Expert Panel clearly indicated that any closures put in place should be

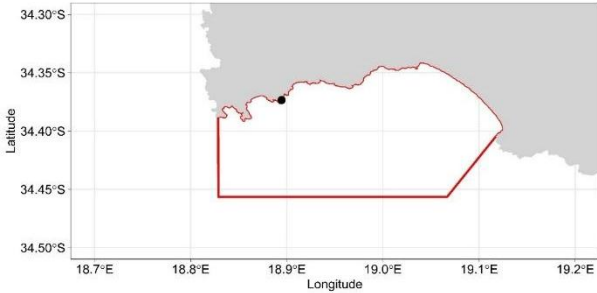
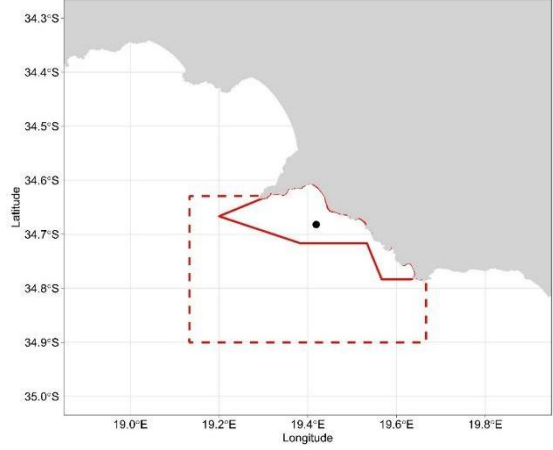
capable of being monitored and evaluated and also that it was necessary for closure duration to take into account African Penguin life histories - including the period when they first breed at 4-6 years old and duration of a generation (10 years). The Expert Panel also recommended that closures are implemented so that penguin populations across each of the west coast, Southern Cape and Eastern Cape regions are represented. The court order endorses this risk-averse approach which caters for unexpected shocks such as oil spills, predation by seals and other predators, as well as extreme weather events - all of which compound the underlying threat of lack of prey and the low breeding numbers and risk of malnutrition which it causes.

Along the west coast, the large existing closure around Dassen Island (first implemented as a temporary measure in September 2022) will be retained without extension to an area to the north. The northern extension was sought in the court papers as it has been shown to be important to African Penguins through the tracking data which is how seabird scientists have identified where these birds prefer to forage. The closure agreed at Dassen Island accommodates the interests of commercial fisheries but has been counterbalanced, in this region, by an extended closure of a 20km radius around Robben Island. The 20km closure at Robben has been shown by cutting-edge scientific analysis to be capable of slowing population declines around this breeding colony: in fact, it shows that this closure in place until at least 2033 may in fact reverse the decline of this population.

Dassen Island	Robben Island
	
<p>Closure around Dassen Island on the west coast reflecting that which is currently in place – and put in place initially as a temporary measure in September 2022 which stretches from just south of Yzerfontein in the north to offshore of Koeberg in the south.</p>	<p>Closure around Robben Island on the west coast reflecting the 20km radial closure that was in place during the Island Closure Experiment and extending from a location near Oudekraal across Table Bay to the northern boundary of the Koeberg Nature Reserve.</p>

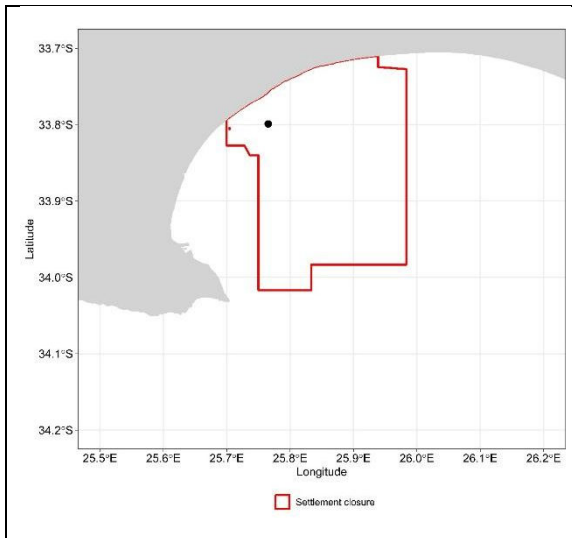
In the Southern Cape, a hard-won victory at Stony Point has seen the majority of the preferred foraging range of this colony protected. This closure is vital given that the “split zone” closure at Dyer Island remains in place – allowing vessels that are under 26m in length to continue fishing in the

areas which overlap with African Penguins preferred foraging range around this sensitive island. It is also critical as the Southern Cape is the most heavily fished area with both sardine and anchovy fisheries competing with African Penguins and other predators.

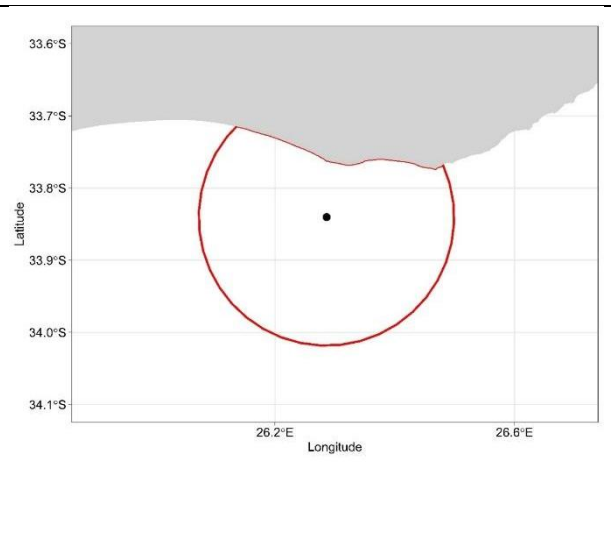
Stony Point	Dyer Island
	
<p>Closure around Stony Point in the Southern Cape and reflecting a closure which was negotiated to provide protection to African Penguins covering an area largely incorporating their preferred foraging areas and protecting this colony which is popular with tourists and important to communities. The closure stretches from the Hangklip lighthouse to the eastern edge of Kerries Bay near Hawston.</p>	<p>Closure around Dyer Island in the Southern Cape reflecting the closure which is currently in place – initially implemented as a temporary measure in September 2022. This “split zone” closure allows no fishing inside the area bounded by the dark red line. However, vessels which are shorter than 26 metres in length are able to fish in the area between this entirely closed coastal area and the dotted line boundary which stretches from Danger Point to Quoin Rock.</p>

Finally, in the Eastern Cape, a 20km closure will surround Bird Island (where very little fishing occurs), while St Croix Island’s closure provides protection for this very vulnerable population under threat not only from competition with commercial fisheries but also from development pressure in the very sensitive Algoa Bay, including noise and oil pollution risks from ship-to-ship fuel transfer.

St Croix Island	Bird Island
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Closure around St Croix Island in the Eastern Cape's Algoa Bay reflecting a closure which was negotiated to provide protection to African Penguins covering an area largely incorporating their preferred foraging areas while also allowing local industry to fish near Port Elizabeth harbour to the west. This area seeks to protect areas for the extremely vulnerable St Croix Island colony extending offshore between Ngqura (Coega) Harbour in the west to 12km east of the Sundays River mouth.



Closure around Bird Island in the Eastern Cape's Algoa Bay reflecting the 20km radial closure that was in place during the Island Closure Experiment and which is situated offshore of Addo Elephant National Park's Woody Cape section – an area where little commercial fishing takes place.

Kate Handley, Executive Director of the Biodiversity Law Centre, says: “This order is an important step in moving the dial in the long impasse between conservation and industry which has seen inaction since 2018. We look to the DFFE and the Minister to ensure full implementation of this order and to follow-through on taking all necessary steps to protect the African Penguin. Doing so is not only important for the wellbeing and survival of this iconic species but is critical to ensure that our ocean ecosystem is protected for the benefit of future generations. The order spans the same 10 years before the predicted date of extinction of African Penguins in the wild – and it is absolutely essential that the South African government takes proactive, precautionary steps to protect our country’s mega-biodiversity, protect threatened species and prevent extinction. The imposition of scientifically-informed fishing closures, to limit commercial purse-seine anchovy and sardine fishing activities around key African Penguin breeding colonies is a long-overdue step towards securing their survival in the wild and bringing this species back from the brink of extinction.”

Dr Alistair McInnes, BirdLife South Africa’s Seabird Conservation Programme Manager, hailed the court order as an important milestone in the fight to protect African Penguins: “This case has been first and foremost about improving the chances of conserving Africa’s only penguin species, but the

outcome of these closures will also benefit other marine predator species, such as Cape Gannets, Cape Cormorants, and other socio-economically important fish that also eat sardine and anchovy, as well as the livelihoods of many who derive benefits from marine ecosystems that are equitable and judiciously managed. We will continue to be led by the status of African Penguins and other seabirds, as indicators of the health of our oceans, and to focus with our partners on science-led solutions to conservation management along South Africa's coastline."

Nicky Stander, Head of Conservation at SANCCOB, says: "Today's order is a significant step forward in our fight to save the African Penguin from extinction. The agreement which has been made an order of court serves as a testament to the power of collective action and the dedication of the seabird scientists whose expertise is integral to the work of SANCCOB, BirdLife South Africa and the DFFE. We are immensely grateful for the widespread support from individuals and organisations that share our commitment to preserving biodiversity. However, while we celebrate today's success, we remain acutely aware that our journey is far from over. The threats facing the African Penguin are complex and ongoing – and the order itself requires monitoring, enforcement and continued cooperation from Industry and the government processes which monitor and allocate sardine and anchovy populations for commercial purposes. We must continue to advocate on the basis of our scientific research, and implement effective conservation strategies to ensure that African Penguins will thrive in the future. Our work continues, and we count the continued support and engagement of the community to face the challenges ahead."

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