Section 1. Title

This Ordinance shall be known as the Town of Naples Marine Division Enforcement Ordinance (the “Ordinance”).

Section 2. Authority.

This Ordinance is enacted in accordance with Town of Naples Marine Division Ordinance and Title 12 M.R.S.A. Chapter 905 ss10402-10403, Chapter 935 ss13072-13073 & ss13068-A, Title 38 Chapter 1 ss1-13, as may be amended.

Section 3. Purpose.

The purpose of this Ordinance is to:
   I. Establish the roles and definitions of enforcement of local ordinance and state watercraft laws as defined in Title 12 M.R.S.A Chapter 905 ss10402-10403, Chapter 935 ss13068-A & Chapter 220 ss1900
   II. Provide the best protection for the health, safety, property and welfare of the residence and visiting public of the Town and surrounding municipalities.

Section 4. Establishment.

There is hereby established the Naples Marine Safety Division shall have due authority to enforce the state watercraft laws per Town of Naples Ordinance as defined in M.R.S.A Title 12 Chapter 905 ss10402-10403 & Chapter 935 ss13068-A.
Section 5. Definitions.

For the purposes of this Ordinance, the following terms shall be defined as follows:

5.1 “Department”, “Unit”, “Division” means the Naples Marine Safety Division established pursuant to the Town of Naples Marine Safety Division Ordinance.

5.2 “Harbor Master (HM)” means the person whether it be full-time or part-time duly appointed pursuant to the Town of Naples Marine Safety Division Ordinance and who serves as the head of the Division.

5.3 “Deputy Harbor Master (DHM)” means an active unit member(s) appointed by the Harbor Master whether it be full-time, part-time or on-call volunteer to fulfill the duties and responsibilities assigned to them by the Harbor Master or Assistant.

5.5 “Marine Patrol/Safety Officer(s) (MPO)” means an active unit member(s) appointed by the Harbor Master whether it be full-time, part-time or on-call volunteer to fulfill duties and responsibilities assigned to them.

5.6 “Town” means the Town of Naples

5.7 “CCUCS” Cumberland County Unified Court System means the statutory prosecuting court authority for the State of Maine and the County of Cumberland. This will primarily be located at the Bridgton District Court (Bridgton, Maine) but could also be located at the Portland Unified Court (Portland, Maine)

5.8 “Jurisdictional Response Areas (JRA)” established areas of jurisdictional authority and response. Areas or Jurisdictional Authority include but not limited to (Long Lake, Brandy Pond, Songo River, Crooked River, North End of Sebago Lake, Muddy River, Bay of Sebago, Bay of Naples and Tricky Pond. (JRA) may also include areas in mutual aid or MOU jurisdictions.

5.9 “M.R.S.A. means Maine Revised Statutes Annotated. Rule or governing law as established by the Maine Legislative government.

5.10 “Fine/Fee Schedule” means assessed monetary fee’s to include but not limited to ordinance ticketing fines, court costs and any other associated costs in the collection of a violation that has occurred.
5.11 “Reasonable Suspicion” means there is a reasonable presumption that a violation/crime has been, is being or will be committed. It is a belief based on facts or circumstances and is informed by the enforcement official’s training and experience. Reasonable suspicion is seen as more than a guess or a hunch but is less than Probable Cause.

5.12 “Probable Cause” means there is logical belief, supported by facts and circumstances that a violation/crime has been, is being or will be committed.

5.13 “Watercraft” means any boat or other vessel that travels by manual, wind or motor power in the water. Any vessel may include but is not limited to motorboat, Personal Watercraft (PWC) canoe, kayak, paddleboard, log rafts or sailing vessel operated by skilled or an unskilled person.

5.14 "Camping area" means, in addition to the generally accepted interpretations, lakeshore places, picnic and lunch grounds or other premises where tents or recreational vehicles are permitted and licensed under Title 22, section 2495.

5.15 "Developed swim area" means an area delineated by line buoys in accordance with the aids to navigation system established pursuant to section 1894. Title 12 chapter 220 ss 1894

5.16 "Qualified entity" means a camping area, recreational camp or governmental entity or governmentally sponsored group.

5.17 "Recreational camp" means day camps, boys and girls camps and family, hunting, fishing and similar camps licensed under Title 22, section 2495.

5.18 "Swim line" means a line, rope or a series of buoys used to delineate an area of surface water for the purpose of swimming.

5.19 “Bathing Area” means an area designated for swimming but is undesignated/permissioned and is not specifically designated by “Swim Line” Bathing Areas are traditionally near the shore line access and would not exceed the water safety zone.

5.20 "Water safety zone" means the area of water within 200 feet of shoreline, whether the shoreline of the mainland or of an island.

5.21 “Director” means Director of Bureau of Parks and Land for the State of Maine Department of Conservation
Section 6. Division Organization and Duties.

6.1 Duties of the Division

6.1.1 The Division shall provide Marine related response, enforcement and education within the jurisdictional response areas of the Town of Naples and elsewhere as provided by Mutual Aid or other contractual agreements approved by the Board of Selectpersons.

6.1.2 Division members shall be authorized to issue and write summons/citations/USACs in the event of a violation of Town Ordinance or State Law. All criminal activity cases will be referred to the Maine Warden Service or Cumberland County Sheriff’s Office.

6.1.3 Marine Division Unit members are sworn officers by the Town and have similar but limited authority to act as Town Constables.

6.1.4 The Division shall work to assist and enforce Invasive Aquatic Species Plants inspections per the Town of Naples Invasive Aquatic Plant Survey Ordinance. Effective June 09, 2018

6.1.5 The Division shall work to and assist and enforce the Town of Naples Shoreland Zoning Ordinance Aquatic Structures section 15 (Land Use Structures) Section C (Aquatic Structures)

6.2 Powers and Duties.

6.2.1 The Harbor Master shall have the duties established by Title 12 M.R.S.A. Chapter 905 ss10402-10403 & Chapter 935 ss13072-13073, Title 38 Chapter 1 ss1-13, as may be amended.

6.2.2 The Harbor Master or his/her designee listed as Deputy Harbor Master or Marine Safety/Patrol Officer who have met training and certification requirements with State of Maine guidelines in accordance with Title 12 & Title 38 requirements and those who have been given sworn authorities action by the Town of Naples and the Town of Harbor Master may issue watercraft violation ticket/summonses as directed by this ordinance.

Section 7. Title 12 Chapter 935 ss13068-A & 13071-A “Enforceable Violations”

7.1 Launching contaminated watercraft.

A person may not place a watercraft that is contaminated with an invasive aquatic plant upon the inland waters of the State.

A. A person who violates this subsection commits a civil violation for which a fine of not less than $500 and not more than $5,000 per violation may be adjudged. A fine imposed under this subsection may not be suspended by the court.
B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

7.2 Unlawfully permitting operation by another.

A person may not permit operation of a watercraft in violation of this subsection.

A. A person violates this subsection if that person owns a watercraft and negligently permits another person to operate that watercraft in violation of this chapter.

   (1) A person who violates this paragraph commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.
   (2) A person who violates this paragraph after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

B. A person violates this subsection if that person is the parent or guardian responsible for the care of a minor under 18 years of age and the minor operates a personal watercraft in violation of this chapter.

   (1) A person who violates this paragraph commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.
   (2) A person who violates this paragraph after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

7.3 Operating motorboat other than personal watercraft while underage.

A person under 12 years of age may not operate a motorboat propelled by machinery of more than 10 horsepower unless under the immediate supervision of a person located in the motorboat who is at least 16 years of age.

This subsection does not apply to operating a personal watercraft.

A. A person who violates this subsection commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

7.4 Operating watercraft without proper safety equipment.

Except as provided in paragraph B, a person may not operate a watercraft without proper safety equipment as described in paragraph A.

A. A person operates a watercraft without proper safety equipment if the person operates a watercraft and:
(1) Fails to comply with the same requirements pertaining to lights, life-saving devices, fire extinguishers and other safety equipment as required by federal laws and regulations on federal navigable waters, as promulgated under the Federal Boat Safety Act of 1971, Public Law 92-75, as amended;

(2) Fails to comply with requirements pertaining to additional equipment not in conflict with federal navigation laws, which the commissioner may prescribe if there is a demonstrated need;

(3) Fails to wear a Coast Guard approved Type I, Type II, Type III or Type V personal flotation device while operating a watercraft.

B. Notwithstanding paragraph A:

(1) Canoes, owned by a youth camp located upon internal waters in the State and duly licensed by the Department of Health and Human Services and utilized by campers under the direction and supervision of a youth camp counselor at least 18 years of age or older during training and instruction periods on waters adjacent to the main location of the youth camp within a distance of 500 feet from the shoreline of that camp, are exempt from this subsection; and

(2) Log rafts, carrying not more than 2 persons and used on ponds or lakes or internal waters of less than 50 acres in area, are exempt from carrying personal flotation devices.

C. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

7.5 Operating watercraft to endanger.

A person may not operate any of the following so as to endanger any person or property:

A. Watercraft;

B. Water ski; or

C. Paddleboard or similar device.

A person who violates this subsection commits a Class E crime.

7.6 Reckless operation of watercraft.

A person may not operate any of the following in such a way as to recklessly create a substantial risk of serious bodily injury to another person:

A. Watercraft;

B. Water ski; or

C. Paddleboard or similar device.
A person who violates this subsection commits a Class D crime.

7.7 **Operating watercraft at greater than reasonable and prudent speed.**

A person:

A. May not operate a watercraft except at a reasonable and prudent speed for existing conditions; and

B. Shall regulate the speed of a watercraft so as to avoid danger, injury or unnecessary inconvenience in any manner to other watercraft and their occupants, whether anchored or underway; waterfront piers; floats or other property or shorelines, either directly or by the effect of the wash or wave created by the watercraft through its speed, or otherwise.

A person who violates this subsection commits a Class E crime.

7.8 **Imprudent operation of watercraft.**

A person may not, while operating a watercraft on the inland or coastal waters of the State, engage in prolonged circling, informal racing, wake jumping or other types of continued and repeated activities that harass another person.

A. This subsection may be enforced by any law enforcement officer or a person may bring a private nuisance action for a violation of this subsection pursuant to Title 17, section 2802.

B. The following penalties apply to violations of this subsection.

1. A person who violates this subsection commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

2. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

7.9 **Operating watercraft to molest wild animals or wild birds.**

A person may not operate a watercraft so as to pursue, molest, harass, drive or herd any wild animal or wild bird, except as may be permitted during the open season on that animal.

A. A person who violates this subsection commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

7.10 **Operating motorboat that exceeds noise limits.**

The following provisions govern noise limits.

A. A person may not operate a motorboat in such a manner as to exceed:

1. A noise level of 90 decibels when subjected to a stationary sound level test with and without cutouts engaged and as prescribed by the commissioner; or
(2) A noise level of 75 decibels when subjected to an operational test measured with and without cutouts engaged and as prescribed by the commissioner.

B. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than $300 nor more than $500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

C. This subsection does not apply to motorboats that are operating in a regatta or race approved by the commissioner under section 13061.

7.11 Operating motorboat without muffler.

A person may not operate a motorboat that is not equipped at all times with an effective and suitable muffling device on its engine or engines to effectively deaden or muffle the noise of the exhaust, except that motorboats that are operating in a regatta or race approved by the commissioner under section 13061 may use cutouts for these motorboats while on trial runs or competing in speed events, for a period not to exceed 48 hours immediately preceding or following such an authorized event.

A. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

7.12 Tampering with motorboat muffler system.

A person may not modify a motorboat muffler system in any way that results in an increase in the decibels of sound emitted by that motorboat.

A. A person who violates this subsection commits a civil violation for which a fine not to exceed $100 may be adjudged.

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

7.13 Headway speed only.

The following provisions govern speeds in certain zones.

A. A person may not operate a watercraft at a speed greater than headway speed while within the water safety zone or within a marina or an approved anchorage in coastal or inland waters except:

(1) While actively fishing; or
(2) While picking up or dropping off one or more persons on water skis in the water safety zone if a reasonably direct course is taken through the water safety zone between the point that the skiers are picked up or dropped off and the outer boundary of the water safety zone.

B. For the purposes of this subsection, "headway speed" means the minimum speed necessary to maintain steerage and control of the watercraft while the watercraft is moving.

C. The following penalties apply to violations of this subsection.
   (1) A person who violates this subsection commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.
   (2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

7.14 Operating motorboat in bathing areas.

The following provisions apply to operating a motorboat in a bathing area.

A. A person may not:
   (1) Operate a motorboat within a bathing area marked or buoyed for bathing; or
   (2) Operate an airmobile on a beach adjacent to a bathing area marked or buoyed for bathing.

B. The following penalties apply to violations of this subsection.
   (1) A person who violates this subsection commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.
   (2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

7.15 Violation of surface use restriction order.

A person may not operate, launch or remove a watercraft at a restricted-access site or refuse inspection of a watercraft in violation of an order issued under Title 38, section 1864.

A. A person who violates this subsection commits a civil violation for which a fine of not less than $500 and not more than $5,000 per violation may be adjudged. A fine imposed under this subsection may not be suspended by the court.

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

7.16 Operating motorboat in prohibited or restricted area.

The following provisions apply to operating a motorboat in prohibited or restricted areas.

A. A person may not:
(1) Operate a personal watercraft in violation of section 685-C, subsection 10 or any rule adopted by the Maine Land Use Planning Commission to implement that subsection;

(2) Operate a watercraft equipped with a motor greater than 10 horsepower on Cold Rain Pond in the Town of Naples or on Holt Pond in the Town of Naples and the Town of Bridgton;

B. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

Operating personal watercraft

7.17 1. Operating personal watercraft while underage. A person under 16 years of age may not operate a personal watercraft.

A. A person who violates this subsection commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

2. Additional safety requirements while operating personal watercraft. The following provisions apply to operating or being a passenger on a personal watercraft.

A. A person may not:

(1) Operate or be a passenger on a personal watercraft unless the person is wearing Coast Guard approved Type I, Type II or Type III personal flotation devices; or

(2) Operate a personal watercraft during the hours between sunset and sunrise.

B. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.

(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

3. Operating rented or leased personal watercraft without identification decal. A person may not operate a rented or leased personal watercraft on Brandy Pond in the Town of Naples or on Long Lake in the Town of Naples, the Town of Bridgton and the Town of Harrison that does not have a clearly visible decal affixed to the personal watercraft that identifies the rental agent.

A. A person who violates this subsection commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.
B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

4. Operating personal watercraft in prohibited area. The following provisions apply to operating a watercraft in prohibited areas.

A. A person may not operate a personal watercraft on:

(1) Trickey Pond in the Town of Naples in Cumberland County;
(2) Brandy Pond in the Town of Naples in Cumberland County between sunset and 9:00 a.m.

B. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than $100 nor more than $500 may be adjudged.
(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

5. Operating personal watercraft while 16 years of age or older and under 18 years of age; boater education. The following provisions apply to operating a personal watercraft by a person 16 years of age or older and under 18 years of age.

A. A person 16 years of age or older and under 18 years of age may not operate a personal watercraft unless:

(1) That person is accompanied by a person 18 years of age or older who physically occupies the personal watercraft; or
(2) While operating the personal watercraft, that person possesses on that person identification showing proof of age and proof of successful completion of a boater safety education course approved by a national association of state boating law administrators, including but not limited to courses offered by the U.S. Coast Guard Auxiliary or other organizations approved by the commissioner for providing boater safety education courses. The commissioner shall establish a list of approved organizations for providing boater safety education courses and make that list readily available to the public.

B. The following penalties apply to violations of this subsection.

(1) A person who violates this subsection commits a civil violation for which a fine of not less than $100 and not more than $500 may be adjudged.
(2) A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

Section 8. Title 12 Chapter 220 Subchapter 10 ss1900 “Swim Areas”

8.1 Property rights. Nothing in this subchapter may be construed to affect private property rights or the State's ownership rights over inland waters.

8.2 Swim area prohibition. A person may not establish or maintain a swim line or a developed swim area without a permit issued under subsection 8.3.
8.3 **Issuance of permit; revocation.** The director may issue a permit to establish and maintain a swim line or a developed swim area within the water safety zone only to a qualified entity and only if the swim line or developed swim area is designed solely to provide recreational swimming opportunities for the public.

   A. If the director determines, after notice and an opportunity for hearing, that a swim line or developed swim area is being used for purposes other than to provide recreational swimming opportunities for the public, the director may revoke the permit.

   B. If the Commissioner of Inland Fisheries and Wildlife believes that a swim line or a developed swim area is being used for purposes other than to provide recreational swimming opportunities for the public and is interfering with boating or fishing, the commissioner shall notify the director and may request that the permit for the swim line or developed swim area be revoked pursuant to paragraph A. The length of the area delineated by a swim line or of a developed swim area may not exceed 50% of the entire length of the shore frontage of the property from which the developed swim area or the area delineated by a swim line extends or 200 feet, whichever is greater, except that in no event may the developed swim area or the area delineated by a swim line extend beyond the shore frontage of the property. The length of the developed swim area or of an area delineated by a swim line must be measured parallel to the shore.

8.4 **Fee; expiration.** Permits issued under subsection 8.3 expire 5 years after the date of issuance. The Town shall establish by rule a fee for the permits. All revenues from fees must be deposited and used to support the Marine Safety Department.

8.5 **Enforcement.** A municipally appointed inland harbor master, code enforcement officer or law enforcement officer is primarily responsible for the enforcement of this subchapter.

8.6 **Rules.** The Town shall adopt rules to implement and carry out the purposes of this subchapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Section 9. Title 38 Chapter 1 SubChapter 1 ss3 Mooring Sites: Winter Mooring Ball Removal**

9.1 A harbor master, a code enforcement officer or, in the case of a great pond located in an unorganized territory, a board of county commissioners of the county in which the unorganized territory is located may direct the master or owner of a boat or vessel to remove that person's mooring or floating dock from a great pond if the harbor master, code enforcement officer or the board of county commissioners determines that leaving the mooring or floating dock in during ice-in conditions would create a public safety hazard.
9.2 In accordance with the Town of Naples this Marine Division Ordinance, the Town has established December 1st as the due date to have all mooring balls removed from the waterways. Failure to remove mooring balls past the December 1st due date will result in an ordinance violation and will result in fines issued by the Town. Failure to comply with the removal date or failure to pay fines will result in the loss of mooring privileges.

Section 10. Court Authority and Appearances

10.1 Court Authority
This ordinance allows the officers of the Naples Marine Safety Division to act on behalf of the Town of Naples in the Cumberland County Unified Court System as direct representatives of the Town of Naples in specific regards to the enforcement of marine related statutes listed in section

10.2 The primary court for prosecution of ordinance related matters will be held at the Bridgton District Court located at 3 Chase Street Bridgton, Maine.

10.3 The Naples Marine Division will set up and hold two court appearance dates for the purpose of any appeals made for any violations written by Marine Safety Division personnel. One date will be set in July and one date will be set in December. Dates for that will be scheduled in January in cooperation with the ADA of the Bridgton District Court and Clerk of Courts.

10.4 The Harbor Master may act as the “Court officer” for the Unit, however in the event the Harbor Master is unable to attend the court hearings for those cases then the officer who wrote the violation shall be expected to report to Court and present his/her case for prosecution.

10.5 Any and all monetary findings/decision made by the Court will be collected and delivered to the Town Clerk at the Naples Town Office unless other arraignments have been made by the Judge hearing the case.

Section 11. Supersessions, Severability, Amendments and Adoptions.

11.1 Supersession
This Ordinance supersedes and replaces any or all like or comparable ordinances, policies or decisions previously enacted or adopted by the Town, including or without limitation the implementation policy for Naples Marine Safety, Naples Marine Patrol or Office of the Harbor Master. This Ordinance shall remain in effect unless it is revoked or suspended in accordance with Title 30A Chapter 141 ss3001-3009.

11.2 Severability.
The invalidity of any portion of this Ordinance shall not invalidate any other thereof.

**11.3 Amendments.**
This Ordinance may be amended from time to time in accordance with the provisions of Title 30A M.R.S.A. Chapter 141 ss3002, as may be amended. It is recommended the Harbor Master review this Ordinance periodically and consult with the Town Manager as to urgent or necessary amendments.

**11.4 Adoption**
This Ordinance was submitted to the voters of the Town of Naples and shall be effective upon its adoption by regular or special Town Meeting.

Adopted:

Attest: ______________________________
Judy Whynot, Town Clerk