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ISM and Litigation Risk Management

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Introduction

- ISM and case for reform
- Characteristics of ISM
- Disclosure
- Seaworthiness
- The Achilles heels of ISM
- Insurance and loss of cover

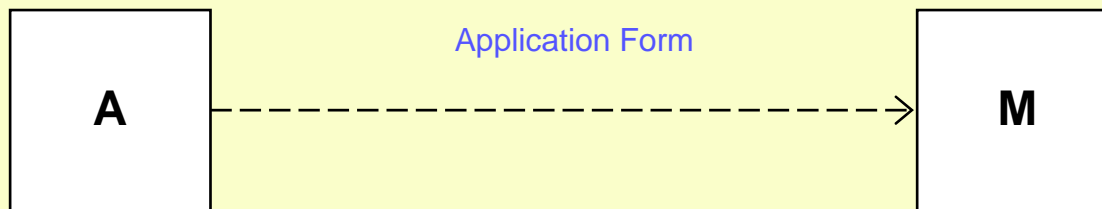
ISM and the Case for Reform

- Equipment
- Competence
- Procedures
- Commitment
- Attitude
- Motivation

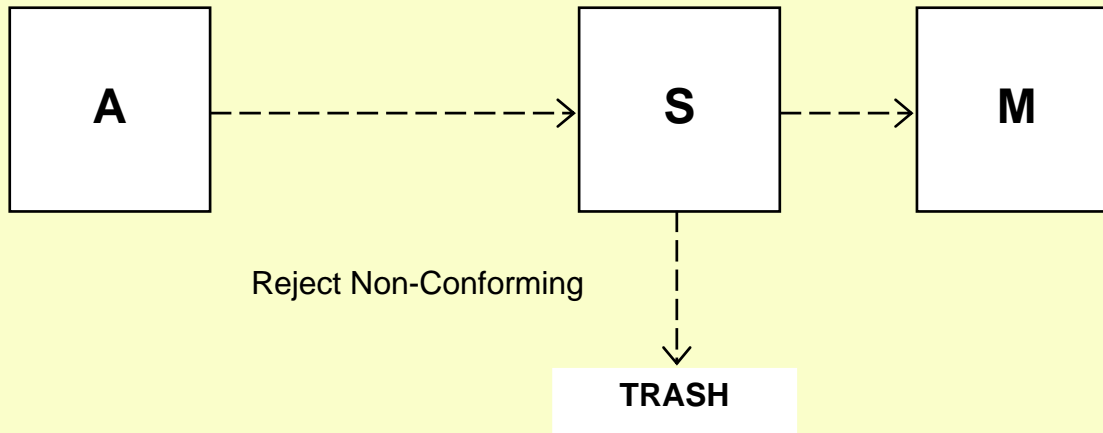
Characteristics Of ISM

- Not Prescriptive
- Prevention management & mitigation preparedness
 - Risk assessment approach
 - Bespoke procedures
- Personnel – Responsibilities, authorities and reporting lines
 - Company / vessel specific
 - Mandated
- Record keeping / Audit trail
- Continuous improvement

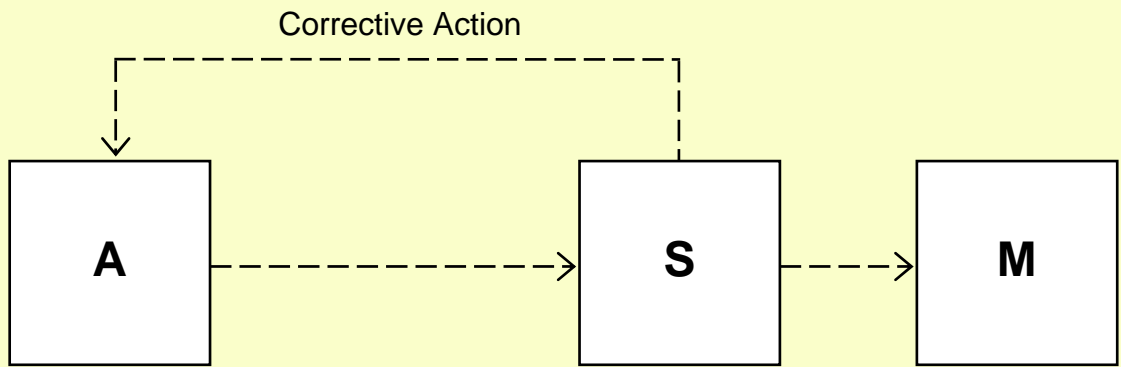
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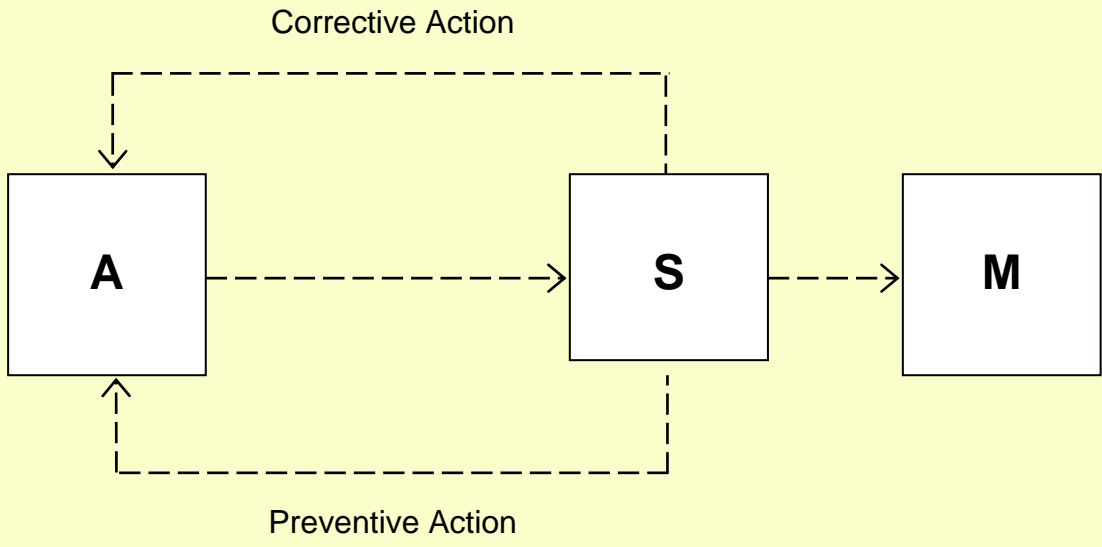
Quality by Inspection



Quality Control



Quality Assurance



Continuous Improvement Investigations

- What went wrong?
- Why did it go wrong?
- How do we minimise the risk of such a “wrong” occurring in the future?

Disclosure Requirements – 1

A litigant must disclose the documents:

- On which he relies,
- Which adversely affect his own case
- Which adversely affect another party's case
- Support another party's case.

Disclosure Requirements – 2

- Reasonableness & Proportionality
- Relevance
- Privilege

Disclosure Requirements – 3

Statement of Truth:

- Honest belief in case
- Claim supported by evidence
- Prevent claim evolving
 - During disclosure
 - During trial
 - Clarke v. Marlborough Fine Art

Disclosure Requirements – 4

- Duty is continuous
- Documents created post incident
- Previous incidents
- Other vessels in fleet?

The Seaworthiness Obligation

- The carrier is bound before and at the beginning of the voyage, to exercise due diligence to make the ship seaworthy
- Obligation is non delegable

Defining Seaworthiness

- A vessel is seaworthy when it is equipped and manned, so that in normal circumstances, it can load, carry, care for and discharge the cargo properly and safely on the contemplated voyage.

Collision/Grounding and Fatigue

- Lookout arrangements
- Rest period compliance/STCE minimum
- Watchkeeping arrangements
- Fatigue prevention
- Safe manning

Achilles Heel 1 – The System

- System compliance
- System conflict

Achilles Heel 2 – The Records

- Non-conformities
- Incomplete / Missing records
- Previous incidents
- Deficient records
- Falsified records / Records conflict

Achilles Heel 3 - Continuous Improvement



- What, Why, and How Investigations
 - Material incident
 - Previous incident
 - DOC umbrella vessel
- Evidencing continuous improvement
- Oil major reports

Post Incident Audits

- Purpose
- Timing
- Location
- Case Management Briefing

ISM, the Witness and Statement Evidence



- Statements and system review
- Statements and record review
- Identification & resolution of evidential conflicts
- Witness availability and cross examination

Seaworthiness and Insurance 1

Marine Insurance Act 1906 S.39(4)

- A ship is deemed seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

Seaworthiness and Insurance 2

Marine Insurance Act 1906 S.39(5)

- ... where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the Insurer is not liable for any loss attributable to unseaworthiness.

Seaworthiness and Insurance 3

The Star Sea Insurance has defence to claim where:

- V/L sent to sea in unseaworthy state
- With privity of the assured
- Unseaworthiness causative of loss

Seaworthiness and Insurance 4

- Privity
- Alter ego
- Designated person
- Achilles heels and system compliance/conflict

Conclusion

- Litigation and evidence
- Case management
- Insurance
- System compliance/conflict



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