

CROSSING THE LINE

As more adventurers access side- and backcountry terrain from resorts, management shifts from policing to educating.

BY PETER OLIVER

Out of bounds. For many skiers, the words resonate with excitement and sex appeal—the thrill that comes with exploring the wilderness and semi-wilderness beyond ski-area boundaries and the kind of renegade good feeling that comes with any experience that is, both figuratively and literally, outside the mainstream.

For ski area managers, however, the term can cook up a whole different stew, with its ingredients including legal concerns, ethical question marks, operational logistics, and fundamental safety. It can be summed up, perhaps in a single question: When it comes to skiers crossing area boundaries, what are a resort's responsibilities?

The answer is muddled, with complexities varying from region to region and even from area to area. But one thing appears certain: Boundary-crossing skiing (and snowboarding) is on the rise. U.S. Forest Service officials throughout the country agree that, while they have no hard statistics, out-of-bounds skiing has seen a big jump in the last five years or so. "Most people who work in this area say there has been a significant increase," says Loren Kroneke, winter sports program manager for the U.S. Forest Service.

The hardgoods industry has numbers that corroborate the anecdotal observations. According to Ski Industry of America statistics, sales of Alpine touring and randonnée equipment in December 2010 were up 90 percent, roughly triple the increase in sales of regular Alpine hardgoods. Several boutique brands are built on backcountry designs, and Nordica has introduced a "sidecoun-

try" line of skis, Hell and Back. Companies of all sizes see a marketing cachet and a market niche in the allure of boundary-crossing sidecountry skiing.

So what's a ski area to do? Not so long ago, ski areas were pretty aggressive in policing their boundaries. Legal cases in the 1970s and 1980s—not necessarily boundary-related—appeared to place a considerable onus on ski areas to assure a safe skiing experience for their guests, and any skiing accessed from an area's lifts—in-bounds or beyond—could conceivably be considered a part of the area's responsibility.

PERSONAL RESPONSIBILITY

But more recent legal trends, especially in states with updated skier-safety laws, have given areas some flexibility. While there have been attempted claims against ski areas in recent years involving out-of-bounds skiing, none has been successful, according to Paul Baugher, risk manager for Boyne's western operations. As a result, attitudes toward boundary management among ski areas, the Forest Service, and law enforcement personnel tend to be relaxing.

And not just in the West. Vermont state law, for example, now relieves ski areas for much of the responsibility for the safety of skiers beyond boundaries. The law, says Karen Wagner, risk manager at Stowe, gives ski areas broad liability protection; backcountry travelers who "use lifts can't hold an area liable," she says, and the law thus "does allow us to allow people to use the backcountry."

The Colorado Skier Safety Act clearly disburdens ski areas of out-of-bounds

responsibilities. It states, "the ski area operator shall have no duty . . . to any skier skiing beyond the area boundaries." Similarly, an Oregon statute declares: "Skiers assume without condition the inherent risks associated with skiing outside a designated area." And in California, a strict skier safety bill that would have required ski areas to mark boundaries more clearly was vetoed by then governor Arnold Schwarzenegger.

The Forest Service has also relaxed its stand. The Forest Service supports "public use (of Forest Service land) for general recreation purposes," says Kroneke. He stops short of suggesting that the Forest Service is promoting backcountry skiing, and acknowledges that enforcing widespread closures would essentially be impossible. Different Forest Service regions address the issue differently—there is no official national policy governing boundary-crossing—but a laissez-faire approach seems to prevail.

"We believe it is better simply to inform [skiers of potential hazards] and provide some controlled access," Kroneke says. Ken Kowynia, the USFS Rocky Mountain Region winter sports program manager, puts it this way: "We don't encourage it (out-of bounds skiing), but we do make it available."

Kowynia says law-enforcement officials are also taking a more let-it-go approach. Not too long ago, for example, sheriffs in areas like Colorado's Summit and San Miguel counties sought ski-area cooperation in outlawing out-of-bounds skiing. But the sheriffs have now tended to pull away from that kind of punitive policy. Also fading into oblivion, says

Kowynia, are so-called “strip boundaries,” with a buffer zone between a marked boundary inside the ski-area boundary, in which skiers venturing OB could more easily be caught and punished.

EDUCATE AND ALLOW

“Educate and allow” is the general tack policies have taken within the Forest Service, law enforcement, search-and-rescue entities, and ski areas. With state laws on their side, ski areas can then feel largely exempt from liability under the “inherent risks” doctrine that guides most states’ laws. Utah’s Inherent Risks of Skiing Act goes so far as to protect rescue and emergency responders. It states, “Any ski patrol member offering emergency services or rescue is exempt from civil liability, unless they have acted in a willful or grossly negligent fashion.”

Most state laws, as well as permit agreements with the Forest Service, have some provision requiring ski areas to post boundary signage where appropriate. But there is no legal requirement to include specific warnings or recommended safety precautions for anyone venturing out-of-bounds. The “educate” part of the educate-and-allow approach arises from a ski area’s goodwill and discretion, not a legal mandate. “We care about our customers, and we want them to know what they are getting into,” is the way Baugher sums up the approach at Crystal Mountain.

Once out of bounds, however, skiers and snowboarders can no longer expect the ski area to act in any kind of advisory or quasi-parental role. They are on their own. As John Hammond, vice-president of mountain ops at Sugarbush, Vt., puts it, “If people want to go for it, they can have it. Our policy is to take care of our trails.”

Wagner sums up Stowe’s policy on backcountry skiing this way: “We don’t disallow it. We just ask people to be careful about it.”

As out-of-bounds travel increases, many areas are redoubling educate-and-allow efforts. Rick Kelley, general manager of Loon Mountain, N.H., says: “We are posting more than we used to. We want people to understand the risks.”

And while Forest Service land is the predominant land type involved, it isn’t



This sign at the Alta Gate at Telluride is under the sole control and responsibility of the Forest Service.

the only type. Stowe, for example, shares its boundaries with state park and private land rather than Forest Service land. (The top of Mt. Mansfield is owned by the University of Vermont.) Nevertheless, state law applies—in Vermont and elsewhere—regardless of whatever land type lies beyond boundaries.

WHAT IS A BOUNDARY?

Although ski-area boundaries are often clearly marked on the trail map, exactly what those boundary lines represent isn’t always clear. Dave Riley, CEO of Telluride, points out that most of the area’s in-bounds terrain is, like out-of-bounds terrain, on Forest Service land.

Hence, Riley says, a skier crossing a boundary line is simply leaving the permit area, but all the time is on Forest Service land. “It is a requirement in each area’s permit that a section addresses boundary management,” says Kroneke. In the Rocky Mountain region, boundary-management plans are usually reviewed on an annual basis, but the principal responsibility resides with the Forest Service. Riley notes emphatically that backcountry gates at Telluride are under the responsibility and control of the Forest Service. “The gates are theirs,

and they open them,” he says.

In addition, boundaries change. At many areas, there are out-of-bounds side-country zones that become popular and are broadly used for “yo-yo skiing,” as one Forest Service official puts it. In the regular permit-review process with the Forest Service, such zones can be added to permit areas from time to time.

And ski areas aren’t always clear in identifying for their guests exactly where the permit boundary lies. Open in-bounds terrain that offers a backcountry experience can create the illusion of having crossed a boundary. Sugarbush’s Slide Brook Basin, for example, is outside of the area’s trail network but is technically not out-of-bounds. Crystal Mountain has an area it calls the South Back Country that lies well within the resort’s permit area. And Sugarloaf, Maine recently opened Brackett Basin, a 250-acre expansion the resort is billing as “sidecountry” even though it is part of a 10-year plan to increase in-bounds terrain.

This smudging of the boundary lines is perhaps a ski area’s way of matching the hardgoods industry’s desire to tap the growing interest in backcountry skiing, as well as the call for more off-the-beat-

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en path adventure by clients.

WHEN TROUBLE STRIKES

A huge piece of the boundary-crossing puzzle, of course, involves search and rescue when problems arise. Where do a ski area's responsibilities lie? Search-and-rescue procedures vary considerably from region to region, although ski-area personnel are usually expected to play a back-up role, rather than take the lead.

In Colorado, search and rescue efforts are usually spearheaded by county sheriffs, says Kowynia, and Baugher confirms that this is a common scenario around the country. In New Hampshire, a team from the state's fish and game department takes charge. "They don't want us to deal with it," says Kelley. "They take over, and if there is any way we can support them, we do." In Stowe, Stowe Mountain Rescue, a local, publicly-

funded team that specializes in hazardous terrain rescue, is usually called in first. In many areas, the state police coordinate search and rescue efforts, responding as they would to other 911 calls.

And of course, the focus of search and rescue efforts varies considerably from one region to the next. In the West, avalanche rescue is typically concern number one, whereas in the East, most rescues involve skiers who have become lost. Regardless of the nature of the rescue, most mountain states have laws similar to what prevails in New Hampshire; "if you need to be rescued, the cost of the rescue is on the party," says Kelley.

Despite the increase in boundary crossing, however, it does not appear that there has been a matching jump in the number of backcountry rescues. A big reason for that, according to both ski-area and Forest Service personnel, is that boundary crossers are predominately expert skiers with at least some backcountry knowledge. "We are having suc-

cess with an educational effort that is actually making a difference," says Baugher.

And while boundary crossing might be on the rise, it still represents a tiny percentage of the overall skier traffic. Sugarbush's Hammond estimates that less than one percent of the ski area's patrol operations have anything to do with out-of-bounds issues.

"Educate and allow" is an approach that appears to be succeeding. Everyone wins—skiers seeking a wilderness experience beyond permit boundaries can do so without fear of prosecution, and ski areas, the Forest Service, law-enforcement entities, and others can allow it without fear of liability.

Ski areas are generally reluctant to promote boundary crossing or use out-of-bounds photos in marketing campaigns. But more and more areas are adopting a very permissive posture. As Baugher puts it, "We like open boundaries. We want people to explore." And they will. ■



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